139-378

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1325.

LINDA E. TIMMONS ET AL., PLAINTIFFS IN ERROR.

vs.

THE ELYTON LAND COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

FILED SEPTEMBER 29, 1890.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 10, 1890.

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1 MARY E. McELRATH, LINDA E. Timmons, and Margaret Celia McElrath
vs.
THE ELYTON LAND COMPANY.

In the Circuit Court of the United States for the Northern District of Alabama, Southern Division.

The plaintiffs sue to recover of the defendants, The Elyton Land Company, which is a corporation chartered under the laws of the State of Alabama and doing business within said State, the following tracts or parcels of land, to wit: The east half of the southeast quarter of section 36, township 17, range 3 west; also west half of the northwest quarter and the northwest quarter of the southwest quarter of section 6, township 18, range 2 west, all lying in the county of Jefferson and State of Alabama, of which they were possessed before the commencement of this suit, and after such possession accrued the defendant entered thereupon and unlawfully with-olds and detains the same, together with five thousand dollars for the detention thereof; and plaintiffs allege that said lands are of more than ten thousand dollars in value.

And the plaintiffs Margaret Celia McElrath and Mary E. McElrath, who are married women and the wives of J. L. McElrath and Oliver T. McElrath, respectively, aver that their interests in and to said lands form a part of their separate statutory estates under the laws of the State of Alabama; and plaintiffs further aver that Mary E. McElrath is a resident of the State of North Carolina,
2 and that Linda E. Timmons and Margaret Celia McElrath are residents of the State of South Carolina.

GORDON MACDONALD,
Attorney for the Plaintiffs.

Endorsed: Filed in clerk's office this 10 day of May, A. D. 1887. A. W. McCullough, clerk.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Northern District of Alabama, Southern Division.

The President of the United States of America to the marshal of said district, Greeting:

You are hereby comman-ed to summon the Elyton Land Company, a corporation chartered under the laws of the State of Alabama and who is a citizen of the State of Alabama, to appear before the hon. circuit court aforesaid, at the place of holding said court, at Birmingham, on the first Monday of September next, to answer the complaint of Margaret Celia McElrath and Linda E. Timmons, who are residents of the county of Spartanburg, State of South Carolina, and Mary E. McElrath, who is a citizen of the State of North Carolina, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the
[SEAL.] Supreme Court of the United States, this first Monday of March, in the year of our Lord one thousand eight hundred and eighty-seven.

Issued the 14th day of May, in the year of our Lord one
3 thousand eight hundred and eighty-seven.

Attest: A. W. McCULLOUGH,
Clerk U. S. Circuit Court, Northern District of Ala.

Endorsed: No. 69. Circuit court of the United States, northern district of Alabama, southern division. Summons and complaint. Linda E. Timmons *et als. vs.* The Elyton Land Company. Original. Issued this 14th day of May, 1887. A. W. McCullough, clerk. Executed by serving a copy of the within summons and complaint on H. M. Caldwell, pres. Elyton Land Co., this the 14 day of May, 1887. A. H. Keller, U. S. marshal, by S. L. Lupton, deputy. Returned and filed this 14th day of May, 1887. A. W. McCullough, clerk.

MARY E. MCELRATH, LINDA E. TIMMONS, & MARGARET CELIA MCELRATH *vs.* THE ELYTON LAND COMPANY, a Body Corporate, Defendant.	In the Circuit Court of the United States of America for the Northern District of Alabama, Southern Division.

Comes the said defendant, The Elyton Land Company, by Wm. C. Ward, its attorney, and says it is not guilty of unlawfully withholding, as alleged in said complaint, the northwest quarter of the southwest quarter of section six, in township 18 S., in range
4 two west, situate in Jefferson county, State of Alabama, the west half of the northwest quarter of said section (6) six, in township (18 S.) eighteen south, in range (2) two west, and the several parcels situate in the east half of the southeast quarter of section (36) thirty-six, in township (17 S.) seventeen south, in range (3 W.) three west, in said Jefferson county, State of Alabama, lying within the corporate limits of the city of Birmingham, and known according to the plan and survey of said city as blocks No. (163), (164), (188), and (189), and block No. (232); so much of blocks No. (119), No. (143), No. (170), No. (173), No. (189), No. (231), No. (234), and No. (760); lots No. 6, No. 7, No. 8, No. 9, No. 10, No. 11, No. 12, and No. 13, of block No. 143, and so much of lot No. 5 and of lot No. 14, of said block No. 143, as lies within the said east half of said southeast quarter of section 36, in township 17 S., range 3 west; lots No. 1, No. 2, No. 3, No. 4, of block No. 146, and so much of lot No. 5, of said block No. 146, as lies in said east half of said
5 southeast quarter; so much of lots No. 1 and No. 18 and of lot No. 20, of block No. 137, and so much of block No. 140, and so much of block No. 191 as lie within the said east half of the said southeast quarter, and all the south half of block No. 144 except lot No. 20 of said block; all the avenues and all the streets and alleys lying within the said east half of the said southeast quarter of

said section 36, in township 17 S., in range 3 west, as will fully appear by a plat of said east half of said southeast quarter, hereto attached as a part hereof, marked Exhibit "A;" and of this the defendant, The Elyton Land Company, puts itself upon the country.

And the defendant doth hereby disclaim possession of all the parcels of land in the said east half of the southeast quarter of section 36, in township 17 south, in range 3 west, in Jefferson county, State of Alabama, not named in the aforesaid plea, and which in said Exhibit "A," to which reference is here made, are marked "A. Martin" and "Clift," and which forms part of the land in said complaint
6 sued for.

And the defendant suggests that it and they whose possession it has for three years next before the commencement of this suit have had adverse possession of the lands in the plea first aforesaid and claim the same under color of title.

WM. C. WARD.
Att'y for Defendant.

Endorsed: No. 69. Mary E. McElrath, Linda E. Timmons, Margaret Celia McElrath *vs.* The Elyton Land Company. Plea. Filed in clerk's office this 20th day of August, A. D. 1887. A. W. McCullough, clerk.

7 THE UNITED STATES OF AMERICA,
Northern District of Alabama, Southern Division.

Be it remembered that heretofore, to wit, on the 12th day of September, A. D. 1887, it being a day of the regular term of the circuit court of the United States for the southern division of the northern district of Alabama, begun and held at the United States court-rooms, in the city of Birmingham, in said division of said district, on the first Monday of September, A. D. 1887, and of the Independence of the United States of America the one hundred and 12th year—present, the Hon. John Bruce, judge of the district court of the United States for the northern district of Alabama, presiding—the following order was had and entered of record on the minutes of said circuit court, to wit:

MARY E. MCELRATH *et als.*
vs. } 69.
THE ELYTON LAND CO.

Come the parties, by their attorneys, and on motion of plaintiff's counsel and for good cause shown it is ordered by the court that this cause be continued.

—— ——, *Clerk.*

8 THE UNITED STATES OF AMERICA,
Northern District of Alabama, Southern Division.

Be it remembered that heretofore, to wit, on the 12th day of March, A. D. 1888, it being a day of the regular term of the circuit court of the United States for the southern division of the northern

district of Alabama, begun and held at the United States court-rooms, in the city of Birmingham, in said division of said district, on the first Monday of March, A. D. 1888, and of the Independence of the United States of America the one hundred and 12th year—present, the Hon. John Bruce, judge of the district court of the United States for the northern district of Alabama, presiding—the following order was had and entered of record on the minutes of said circuit court, to wit:

MARY E. MCELRATH *et als.*
vs.
ELYTON LAND CO. } 69.

Come the parties, by their attorneys, and on motion and for cause shown it is ordered by the court that this cause be, and the same is hereby, continued.

—— ——, *Clerk.*

9 THE UNITED STATES OF AMERICA, }
Northern District of Alabama, Southern Division. }

Be it remembered that heretofore, to wit, on the 16th day of March, A. D. 1888, it being a day of the regular term of the circuit court of the United States for the southern division of the northern district of Alabama, begun and held at the United States court-rooms, in the city of Birmingham, in said division of said district, on the first Monday of March, A. D. 1888, and of the Independence of the United States of America the one hundred and 12th year—present, the Hon. John Bruce, judge of the district court of the United States for the northern district of Alabama, presiding—the following order was had and entered of record on the minutes of said circuit court, to wit:

MARY E. MCELRATH *et als.*
vs.
THE ELYTON LAND CO. } 69.

Come the parties, by their attorneys, and plaintiffs request leave of the court to amend the complaint filed in this cause by adding the names of the following persons as plaintiffs, to wit: James Hall, Eliza Hall, John Timmons, Sarah Timmons, Caroline Timmons, Nancy Timmons, Melissa Timmons, Nancy Timmons, Amanda Morgan, Alfred Timmons, John F. Timmons, and Robert Timmons; which leave is by the court granted.

—— ——, *Clerk.*

10 United States Circuit Court, at Birmingham, Ala.

MARY E. MCELRATH *et al.*
v.
ELYTON LAND CO. } No. 69.

The plaintiff moves to make plaintiff parties the following persons,

viz: Elisa Hall, James Hall, John Timmons, Sarah Timmons, Carolina Timmons, Nancy Timmons, Melissa Timmons, Nancy Timmons, Amanda Morgan, Alfred Timmons, John F. Timmons, & Robert Timmons.

11

THOS. H. WATTS, SR.,
GEO. WESTMORELAND,
PARSONS & DARBY,
GORDON MACDONALD,
G. M. MARKS,
Of Counsel for Pl'ffs.

Endorsed: No. 69. McElrath *vs.* Elyton Land Co. Amendment of complaint. Filed in open court this 16th day of March, A. D. 1888. A. W. McCullough, clerk.

TIMMONS *et als.* *vs.* ELYTON LAND CO. } In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

DECEMBER 11TH, 1888.

In the above-entitled cause it is admitted that John Timmons at the time of his death owned the land described in the complaint.

It is agreed between the parties hereto that the defendant on the trial of this cause may introduce in evidence certified copies of the deeds making its claim of title without accounting for the loss of the originals and may introduce in evidence original deeds without proving the same by the subscribing witnesses thereto.

It is further admitted that John Timmons obtained a deed
12 for the land in sec. 36, T. 17, R. 3 W., in 1832. He entered 80 acres of section 6, T. 18, R. 2 W., in 1851, and he entered 40 acres in section 6, T. 18, R. 2 W., in the first part of 1885.

G. MCDONALD &
G. M. MARKS,
PARSONS & DARBY,
GEO. WESTMORELAND &
WATTS & SON,
For Plaintiffs.
WARD & HEAD,
ALEX. T. LONDON,
For Def't.

Endorsed: Linda E. Timmons *vs.* Elyton Land Co. Agreement of counsel. Filed in office this 11th day of December, 1888. A. W. McCullough, clerk.

13 THE UNITED STATES OF AMERICA, }
Northern District of Alabama, Southern Division. }

Be it remembered that heretofore, to wit, on the 13th day of December, A. D. 1888, it being a day of the regular term of the circuit court of the United States for the southern division of the northern district of Alabama, begun and held at the United States court-

rooms, in the city of Birmingham, in said division of said district, on the first Monday of September, A. D. 1888, and of the Independence of the United States of America the one hundred and 13th year—present, the Hon. John Bruce, judge of the district court of the United States for the northern district of Alabama, presiding—the following order was had and entered of record on the minutes of said circuit court, to wit:

MARY E. MCELRATH *et als.*
vs.
THE ELYTON LAND CO. } 69.

Come the parties, by their attorneys, and on motion of defendant's counsel it is ordered by the court that this cause be, and the same is hereby, continued.

——— ———, *Clerk.*

14 MARY E. MCELRATH, MARGARETT C. McElrath, Linda E. Timmons, John Timmons, *et al.* *vs.* ELYTON LAND COMPANY, a Body Corporate. } In the Circuit Court of the United States of America for the Southern Division of the Northern District of Alabama.

Comes The Elyton Land Company, by Alex. T. London, and for further answer to so much of the original complaint and amended complaint filed in this cause as seeks to recover of
15 this defendant the lands herein described, says that it was not at the commencement of this action and is not now in the possession of the following portions of the land sued for, to wit: Lot No. 7, in block No. 119; lots Nos. 8, 9, & 10, block No. 119; lots Nos. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, in block 119; lots Nos. 1, 2, 3, 16, 17, & 19, in block No. 137; all of block No. 138; all of block No. 139; lots number- 11, 12, & 13, in block 140; lots Nos. 6, 11, 12, 13, 14, & 15, in block No. 143; lots Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, & 20, in block No. 144; block No. 145; lots 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20, in block No. 146; lots 1, 2, 3, 17, 18, 19, and 20, in —; lots 11, 12, 13, 14, and 15, in block No. 163; lots Nos. 16, 17, 18, 19, and 20, in block No. 163; lots 1, 2, 3, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20, in block No. 164; block 165; lot No. 9, in block No. 166; lots No. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, in block No. 170; block No. 171; block No. 172; lots Nos. 1, 2, 3, 4, 5, 6, 7, 8, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, in block No. 173; block No. 187; lots Nos. 1, 2, 3, 4, 5, 6, 7, 8, in block No. 188; portions of lots Nos. 9 and 10 (70 feet by 100 feet); block No. 188; lots Nos. 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24, in block No.
16 188; lots 3, 4, 8, 13, 14, 15, 16, 17, and 19, in block No. 189; block 190; lots No-. 9, 10, 11, & 12, in block 191; block No. 231, block No. 232, block No. 233, block No. 234, block No. 760, block No. 744, block No. 745, block No. 746, except lot No. 4 therein; block No. 752; lot No. 1, in block No. 753; lots Nos. 2 and 3, in block No. 753; lots Nos. 1 and west half of lot No. 2, and lots Nos. 8, 9, 10, 11,

and 12, in block No. 754; lots Nos. 1 and north portion of lot No. 2; north half of lots Nos. 3 and 4 and south half of lot No. 4, in block No. 758; block 759, block 762; west ½ of block 764; block 765; that part of block 769 lying north of the dividing line of the block and that part of the block 769 lying west of the alley in said block, as shown by the *place* of the property of the Elyton Land Company and of the city of Birmingham; block 770; lots No-. 6, 7, & 8, in block No. 849; lot 1, in block No. 850; block No. 766, block 768, block 779, and block No. 831, according to the plan of the property of the Elyton Land Company and of the city of Birmingham; all of which said land is included in the subdivisions, according to
17 the United States Government surveys, sued for in said complaint; and defendant avers that prior to the commencement of this suit it sold the said lands hereinabove described at sundry times to sundry persons, and such persons went into possession under their respective purchases, and defendant disclaims possession thereof at the commencement of this suit.

And for plea to so much of said complaint as seeks to recover the balance of the lands sued for therein and not hereinabove de-described this defendant pleads not guilty.

And the defendant suggests that it and they whose possession it has for three years next before the commencement of this suit have had adverse possession of the lands sued for, as to which it has herein pleaded not guilty, and claimed the same under color of title.

ALEX. T. LONDON.
WARD & HEAD.

Endorsed: No. 69. Mary McElrath *et al. vs.* Elyton Land Company. Plea & disclaimer. Filed in clerk's office Dec'r 14th, A. D. 1888. A. W. McCullough, clerk. London, Ward & Head.

18 THE UNITED STATES OF AMERICA,
Northern District of Alabama, Southern Division.

Be it remembered that heretofore, to wit, on the 19th day of March, A. D. 1889, it being a day of the regular term of the circuit court of the United States for the southern division of the northern district of Alabama, begun and held at the United States court-rooms, in the city of Birmingham, in said division of said district, on the first Monday of March, A. D. 1889, and of the Independence of the United States of America the one hundred and 13th year—present, the Hon. John Bruce, judge of the district court of the United States for the northern district of Alabama, presiding—the following order was had and entered of record on the minutes of said circuit court, to wit:

MARY E. McELRATH *et als.*
vs. } 69.
THE ELYTON LAND CO.

Come the parties, by their attorneys; comes also a jury of good and lawful men, to wit, John H. Russell and eleven others, who are

duly elected, empaneled, and sworn to well and truly try the issues joined and a true verdict render according to the evidence, and the trial of this cause proceeds.

During the examination of witnesses the usual hour of adjournment having arrived, it is ordered by the court that the further trial of this cause be continued until to-morrow morning at ten o'clock.

—— ——, *Clerk.*

19 THE UNITED STATES OF AMERICA, }
Northern District of Alabama, Southern Division. }

Be it remembered that heretofore, to wit, on the 20th day of March, A. D. 1889, it being a day of the regular term of the circuit court of the United States for the southern division of the northern district of Alabama, begun and held at the United States court-rooms, in the city of Birmingham, in said division of said district, on the first Monday of March, A. D. 1889, and of the Independence of the United States of America the one hundred and 13th year—present, the Hon. John Bruce, judge of the district court of the United States for the northern district of Alabama, presiding—the following order was had and entered of record on the minutes of said circuit court, to wit:

MARY E. MCELRATH *et als.* }
vs. } 69.
THE ELYTON LAND CO. }

This being the day and hour to which the further trial of this cause was on yesterday continued, come again the parties, by their attorneys; come again the jury, who were duly elected, empaneled, and sworn herein as aforesaid; and now W. H. Taylor, one of the jurors engaged in the trial of this cause, is by the court excused from further service herein, and by consent of the parties, by their counsel, in open court, the trial of this cause proceeds before eleven jurors in the same manner and with same effect as if before the full jury.

During the examination of witnesses the usual hour of adjournment having arrived, it is ordered by the court that the further trial of this cause be continued until to-morrow morning at 9.30 o'clock.

—— ——, *Clerk.*

20 THE UNITED STATES OF AMERICA, }
Northern District of Alabama, Southern Division. }

Be it remembered that heretofore, to wit, on the 21st day of March, A. D. 1889, it being a day of the regular term of the circuit court of the United States for the southern division of the northern district of Alabama, begun and held in the United States court-rooms, in the city of Brmingham, in said division of said district, on the first Monday of March, A. D. 1889, and of the Independence of the United States of America the one hundred and 13th year—present,

the Hon. John Bruce, judge of the district court of the United States for the northern district of Alabama, presiding—the following order was had and entered of record on the minutes of said circuit court, to wit:

MARY E. MCELRATH *et als.*
vs.
THE ELYTON LAND COMPANY. } 69.

Come the parties, by their attorneys, and, this being the day and hour to which the further trial of this cause was on yesterday continued; come again the jury who were duly elected, empaneled, and sworn herein as aforesaid, and the trial of this cause proceeds.

During the examination of witnesses the usual hour of adjournment having arrived, it is ordered by the court that the further trial of this cause be continued until tomorrow morning at 9.30 o'clock.

——— ———, *Clerk.*

21 THE UNITED STATES OF AMERICA, }
Northern District of Alabama, Southern Division. }

Be it remembered that heretofore, to wit, on the 22d day of March, A. D. 1889, it being a day of the regular term of the circuit court of the United States for the southern division of the northern district of Alabama, begun and held at the United States court-rooms, in the city of Birmingham, in said division of said district, on the first Monday of March, A. D. 1889, and of the Independence of the United States of America the one hundred and 13th year—present, the Hon. John Bruce, judge of the district court of the United States for the northern district of Alabama, presiding—the following order was had and entered of record on the minutes of said circuit court, to wit:

MARY E. MCELRATH *et als.*
vs.
THE ELYTON LAND COMPANY. } 69.

This being the day and hour to which the further trial of this cause was on yesterday continued, come again the parties, by their attorneys; come again the jury, who were duly elected, empaneled, and sworn herein as aforesaid, and the trial of this cause proceeds.

During the examination of witnesses the usual hour of adjournment having arrived, it is ordered by the court that the further trial of this cause be continued until to-morrow morning at 9.30 o'clock.

——— ———, *Clerk.*

22 THE UNITED STATES OF AMERICA, }
Northern District of Alabama, Southern Division. }

Be it remembered that heretofore, to wit, on the 23rd day of March, A. D. 1889, it being a day of the regular term of the circuit court of the United States for the southern division of the northern district of Alabama, begun and held at the United States court-rooms, in the city of Birmingham, in said division of said district, on the first

Monday of March, A. D. 1889, and of the Independence of the United States of America the one hundred and 13th year—present, the Hon. John Bruce, judge of the district court of the United States for the northern district of Alabama, presiding—the following order was had and entered of record on the minutes of said circuit court, to wit:

MARY E. MCELRATH *et als.*
vs.
THE ELYTON LAND COMPANY. } 69.

This being the day and hour to which the further trial of this cause was on yesterday continued, come again the parties, by their attorneys; come again the jury, who were duly elected, empaneled, and sworn herein as aforesaid, and the trial of this cause proceeds.

During the examination of witnesses the usual hour of adjournment having arrived, it is ordered by the court that the further trial of this cause be continued until Monday, March 25th, A. D. 1889.

——— ———, *Clerk.*

23 THE UNITED STATES OF AMERICA, }
Northern District of Alabama, Southern Division. }

Be it remembered that heretofore, to wit, on the 25th day of March, A. D. 1889, it being a day of the regular term of the circuit court of the United States for the southern division of the northern district of Alabama, begun and held at the United States court-rooms, in the city of Birmingham, in said division of said district, on the first Monday of March, A. D. 1889, and of the Independence of the United States of America the one hundred and 13th year—present, the Hon. John Bruce, judge of the district court of the United States for the northern district of Alabama, presiding—the following order was had and entered of record on the minutes of said circuit court, to wit:

MARY E. MCELRATH *et als.*
vs.
THE ELYTON LAND COMPANY. } 69.

This being the day to which the further trial of this cause was continued, come again the parties, by their attorneys; come again the jury, who were duly elected, empaneled, and sworn herein as aforesaid, and the trial of this cause proceeds.

During the argument of counsel the usual hour of adjournment having arrived, it is ordered by the court that the further trial of this cause be continued until to-morrow morning at 9.30 o'clock.

——— ———, *Clerk.*

24 THE UNITED STATES OF AMERICA, }
Northern District of Alabama, Southern Division. }

Be it remembered that heretofore, to wit, on the 26th day of March, A. D. 1889, it being a day of the regular term of the circuit court of the United States for the southern division of the northern

district of Alabama, begun and held at the United States court-rooms, in the city of Birmingham, in said division of said district, on the first Monday of March, A. D. 1889, and of the Independence of the United States of America the one hundred and 13th year—present, the Hon. John Bruce, judge of the district court of the United States for the northern district of Alabama, presiding—the following order was had and entered of record on the minutes of said circuit court, to wit:

MARY E. McELRATH *et als.*
vs.
THE ELYTON LAND COMPANY. } 69.

This being the day and hour to which the further trial of this cause was on yesterday continued, come again the parties, by their attorneys; come again the jury, who were duly elected, empaneled, and sworn herein as aforesaid, and the trial of this cause proceeds.

During the argument of counsel the usual hour of adjournment having arrived, it is ordered by the court that the further trial of this cause be continued until to- — morning at 9.30 o'clock.

—— ——, *Clerk.*

25 THE UNITED STATES OF AMERICA,
Northern District of Alabama, Southern Division.

Be it remembered that heretofore, to wit, on the 27th day of March, A. D. 1889, it being a day of the regular term of the circuit court of the United States for the southern division of the northern district of Alabama, begun and held at the United States court-rooms, in the city of Birmingham, in said division of said district, on the first Monday of March, A. D. 1889, and of the Independence of the United States of America the one hundred and 13th year—present, the Hon. John Bruce, judge of the district court of the United States for the northern district of Alabama, presiding—the following order was had and entered of record on the minutes of said circuit court, to wit:

MARY E. McELRATH *et als.*
vs.
THE ELYTON LAND COMPANY. } 69.

This being the day and hour to which the further trial of this cause was on yesterday continued, come again the parties, by their attorneys; come again the jury, who were duly elected, empaneled, and sworn herein as aforesaid, and the trial of this cause proceeds.

Having heard the evidence by the parties adduced, arguments of counsel, and charge of the court, the jury return their verdict in writing, signed — their foreman, and upon their oath do say: "We, the jury, find all the issues in favor of the defendant.—John H. Russell, foreman."

It is therefore considered by the court that the defendant go

hence discharged from this suit, and that the plaintiffs pay the costs in this behalf expended, for which let execution issue.

——— ———, *Clerk.*

26 THE UNITED STATES OF AMERICA,
Northern District of Alabama, Southern Division.

Be it remembered that heretofore, to wit, on the 28th day of March, A. D. 1889, it being a day of the regular term of the circuit court of the United States for the southern division of the northern district of Alabama, begun and held at the United States court-rooms, in the city of Birmingham, in said division of said district, on the first Monday of March, A. D. 1889, and of the Independence of the United States of America the one hundred and 13th year—present, the Hon. John Bruce, judge of the district court of the United States for the northern district of Alabama, presiding—the following order was had and entered of record on the minutes of said circuit court, to wit:

MARY E. McELRATH *et als.*
vs. } 69.
THE ELYTON LAND COMPANY.

Come the parties, by their attorneys, and the plaintiffs herein praying for an appeal to the Supreme Court of the United States, the same is by the court allowed and the appeal bond fixed at the sum of five hundred dollars; said bond to be approved by the clerk of this court.

——— ———, *Clerk.*

27 The United States Circuit Court for the Southern Division of the Northern District, Sitting at Birmingham, Alabama. March or Spring Term, 1889.

TIMMONS' HEIRS
vs.
THE ELYTON LAND CO.

Be it remembered that at the present term of the court this case was tried on the 27th of March, 1889. Upon the trial the plaintiffs proved that they were the heirs of John Timmons, who died in 1855; that he left no children or descendents thereof, but left a widow, Sarah Timmons, surviving him, and that she was about ten years older than testator. The plaintiffs were non-residents of the State of Alabama. John Timmons, at the time of his death, resided in Jefferson county, in the State of Alabama. On the 10th of August, 1855, he died. In his lifetime he executed a last will and testament, which was duly probated in the probate court of Jefferson county on the 29th of October, 1855. A copy of said last will is hereto attached as Exhibit A, and made a part of this bill of exceptions.

It was proven that at the time of his death said John Timmons

was seized and possessed of the lands sued for. It was shown
28 that he bought the E. ½ of S. E. ¼ of section 36, township 17, R. 3 W., in 1832, and resided on it and cultivated it *and cultivated it* until the time of his death; that he entered from the Government of the United States, in 1851, the W. ½ of the N. W. ¼ of section 6, township 18 S., range 2 west; that on the 11th of January, 1855, he entered from the United States, under the affidavit attached as Exhibit B, but the patent for which was not issued until 1858, the N. W. ¼ of S. W. ¼ of section 6, township 18 S., R. 2 W. It was proved that said lands at the time of the trial were not worth less than sixty thousand dollars.

It was proved that said John Timmons resided on and cultivated as his farm the said eighty-acre tract in said section 36, and was residing thereon at his death; that upon said tract there was a dwelling-house, negro-houses, and other outhouses usual upon a farm. It was shown that a young lady, Lydia Gresswood, had for several years before his death and at his death resided with him as one of his family, & that she was a relation of his wife.

29 It was shown that the eighty-acre tract in said section 6 was all woodland except about one acre, and that it had one house thereon, in which the mother and sister of said John Timmons resided at the time of his death, and the house thereon was built in 1854, for the mother and sister, by said John Timmons; that there was no cleared land thereon except a small garden patch around said house.

It was shown that the said forty-acre tract had no clearing thereon and was all woodland at the time of John Timmons' death.

It was shown that the said eighty-acre tract in section 36, on which he resided, was cultivated in grain, wheat, oats, rye, and corn for the support of himself & family, and but little cotton was grown thereon. It was shown that said eighty-acre tract on which he resided was all cleared and cultivated, except about ten to fifteen acres of woodland, at the date of said will. It was shown that said John Timmons, in his lifetime, was accustomed to get fire-wood and
30 rails from the said eighty-acre tract in said section six, & that it cornered with the *with the* eighty — in section 36; that said fire-wood and rails were got for the use of the farm.

There was some testimony tending to show that after he entered the said forty-acre tract he got fire-wood and rails from it.

The defendants offered as evidence the affidavit made by said John Timmons on the 11th of January, 1855, for the entry of the N. W. ¼ of S. W. ¼ of section 6, a copy of which, marked Exhibit B, is hereto attached as part of this bill of exceptions. The plaintiffs objected to its introduction as any evidence tending to show what the testator meant by the word "farm" used in the said last will. The court overruled said objection and admitted said affidavit as evidence; and to this action of the court the plaintiffs excepted.

It was shown that said John Timmons was an earnest and zealous Baptist and devoted to the cause of "missions."

The defendant introduced evidence showing that Mrs. Sarah

Timmons, the surviving widow, continued to reside on the
31 said residence tract until her death, in March, 1868, and that she sold and conveyed the said tracts of land to one Waldrup in December, 1867, but continued to reside thereon until her death. The defendant claimed title through the said Waldrup and showed a chain of title.

The foregoing was in substance all the evidence bearing on the question in the charge of the court. Upon the evidence the court charged the "jury" that under the will of said John Timmons the said Sarah Timmons took a fee, and that she had a good right to sell and convey the same, and that the plaintiffs had no right to recover any one of the said tracts of land. To this charge and ruling the plaintiffs excepted.

The court further instructed the jury to find a verdict for the defendant; and to this ruling the plaintiffs excepted.

And this is signed and sealed as a bill of exceptions (and made part of the record) in term time by the presiding judge on this the 28th day of March, 1889.

JOHN BRUCE, *Judge.* [SEAL.]

32 Bond of pl'ff in error is hereby fixed at five hundred dollars, to be approved by the clerk of this court.

JOHN BRUCE, *Judge.*

M'ch 28, '89.

EXHIBIT A.

In the name of God, amen.

I, John Timmons, of Jefferson county, in the State of Alabama, and however in bad health, still in perfect soundness of mind and deposing memory, thanks be to God who has so far preserved me, do make and publish this my last will and testament, in manner and form following, that is to say, first and principally, I recommend my *secret* into the hands of Almighty God, and my body I request to be buried in a decent manner, hoping at the general resurrection I shall receive the same soul and body united by the mighty power of God; and as touching such worldly goods as it hath pleased God to bless me with in this life—

First: I will that in order to satisfy all debts that I owe,
33 that my negro man named Frank be sold, and such horses and cattle and all other articles that my wife does not wish to keep; and secondly, I give and bequeath to my beloved wife the horses and farm with all their appurtenances and after such horses and cattle and other articles are sold for the payment of debts of the balance of the stock horses cattle hogs and all other articles shall be hers and at her disposal, also my negro woman Rose, and her two children Jordan and Julia and increase shall be hers and at her disposal, during her natural life.

Thirdly: I will that my mother and sister have a peaceable possession of the house and place where they now live, while they are disposed to continue there, and that they be paid over one hundred

dollars in money when it can be collected, and further that they have a comfortable support from the farm during their natural lives, or so long as they live where they now live, but, if they leave to be under no further obligations to them; and with regard
34 to Lydia Greswood, when she leaves I will that my wife shall be at liberty to give her any property and articles she may think proper to give. And lastly: At the death of my wife, that whatever may remain of my estate, shall be sold and appropriated to missionary purposes.

And I do hereby constitute and ordain my beloved wife and W. H. McMath my executors of this my last will and testament.

In witness whereof I the said John Timmons have set my hand and seal this the 10th day of August 1855.

JOHN TIMMONS

Signed sealed and published and disclosed by the said John Timmons as his last will and testament, in the presence of us who are present at the time of signing and sealing thereof, and who have signed our names in the presence of

W. H. McMATH
J. M. TURNER
PHILEMON PARTAIN

EXHIBIT B.

No. 32036. LAND OFFICE, TUSCALOOSA, ALABAMA.

35 I, John Timmons of Jefferson county, Alabama, having applied to enter the N. W. ¼ of S. W. ¼ of section No. 6, of township No. 18, of range No. 2 west under the act entitled "An act to graduate and reduce the price of the public lands to actual settlers and cultivators" approved 4th August, 1854, do solemnly swear that I enter the same for the use of an adjoining farm owned by me situated on the W ½ of N. W. ¼ of section No. 6 of township No 18 of range No. 2 west, and that, together with said entry I have not acquired from the United States, under the provisions of said act, more than three hundred and twenty acres, according to the established surveys; and further that the said land is not now in the occupancy of any actual settler, whose settlement thereon existed at the date of said law.

Sworn to and subscribed before me on the 11th day of January, 1855.

JOHN TIMMONS

MONROE DONOHO, *Register.*

Endorsed: 69. Linda E. Timmons *vs.* The Elyton Land Company. Filed in clerk's office this 28th day of March, A. D. 1889. A. W. McCullough, clerk. Bill of exceptions. I agree to the
36 bill of exceptions, the copy of the will attached to be verified by the certified copy. March 28th, 1889. Alex. T. London, def't's att'y.

Assignment of Errors.

In Supreme Court of the United States.

MARY E. McELRATH, LYDIA TIMMONS, and Others, Plaintiffs in Error,
v.
THE ELYTON LAND CO., Defendant in Error.

Now come the plaintiffs in error, by their attorneys, and say and allege that in the record and proceedings of the United States circuit court for the northern district of Alabama, southern division, sitting at Birmingham, in the State of Alabama, there hath intervened to their injury manifest error, and they assign as error the following, viz:

1st. That the court erred in admitting as evidence against the objection of plaintiffs the affidavit attached to the bill of exceptions, marked Exhibit B.

2. That the court erred in charging the jury "That under the will of said John Timmons the said Sarah Timmons took a fee, and that she had a good right to *to* sell and convey the same, and that the plaintiffs had no right to recover any one of the said tracts of land."

3. That the court erred in charging the jury to find a verdict for the defendant.

37 4. The court erred in each ruling made against the plaintiffs shown in the bill of exceptions.

5. That the court erred in rend-ing judgment in favor of the defendant, and plaintiffs in error pray that the said rulings of the said circuit court be each held to be error, and that this cause be reversed and remanded to the said circuit court for further proceedings.

J. H. WATTS, SR.,
PARSONS & DARBY,
GEO. WESTMORELAND &
I. I. SICKLES AND
McDONEL & MARKS,
For Plaintiffs in Error.

38 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the northern district of Alabama, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Linda E. Timmons *et als.*, plaintiffs, and Elyton Land Company, defendant, a manifest error hath happened, to the great damage of the said Linda E. Timmons *et als.*, as by their complaint appears, we, being willing that error, if any hath

been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 25th day of March, in the year of our Lord on thousand eight hundred and ninety.

Seal Circuit Court U. S., N. D. of Ala., Sou. Div.

A. W. McCULLOUGH,
Clerk of the Cir. Court of the United States Sou. Division, Nor. Dist. Alabama.

Allowed by—
JOHN BRUCE, *Judge.*

39 I hereby certify that a copy of this writ of error has been lodged in my office for The Elyton Land Company, the defendant in this suit.

A. W. McCULLOUGH,
Clerk of the Cir. Court of the United States, Sou. Div., Nor. Dist. Alabama.

I hereby acknowledge service on the within writ this 14th day of April, 1890.

A. R. NININGER,
U. S. Marshal,
By J. W. BRUCE, *Dep'ty.*

40 Know all men by these presents that we, Linda E. Timmons *et als.*, plaintiffs, Rob't H. Molton and Frank W. Jackson, as sureties, are held and firmly bound unto Elyton Land Company in the full and just sum of five hundred dollars, to be paid to the said Elyton Land Company, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 24th day of March, in the year of our Lord one thousand eight hundred and ninety.

Whereas lately, at a regular term of the circuit court of the United States for the southern division of the northern district of Alabama, in a suit pending in said court between Linda E. Timmons *et als.*, plaintiffs, and Elyton Land Company, defendants, a judgment was rendered against the said Linda E. Timmons *et als.*, and the said Linda E. Timmons *et als.* having obtained a writ of error and filed

a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Elyton Land Company citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said Linda E. Timmons *et als.* shall prosecute said writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

LINDA E. TIMMONS ET AL., [SEAL.]
By Attorney, THOS. H. WATTS, SR.
ROBERT H. MOLTON. [SEAL.]
F. W. JACKSON. [SEAL.]

Sealed and delivered in presence of—
—— ——.

Approved by—
JOHN BRUCE, *Judge.*
A. W. McCULLOUGH,
Clerk U. S. Cir. Court, Sou. Div., Nor. Dist. Ala.

Filed in clerk's office March 25th, 1890.
A. W. McCULLOUGH, *Clerk.*

41 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Elyton Land Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern division of the northern district of Alabama, wherein Linda E. Timmons *et als.* are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff- in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, — of the Supreme Court of the United States, this eighth day of April, in the year of our Lord one thousand eight hundred and ninety.

[Seal Circuit Court U. S., N. D. of Ala., Sou. Div.]

JOHN BRUCE, *Judge.*

42 On this 14th day of April, in the year of our Lord one thousand eight hundred and ninety, personally appeared Jas. W. Bruce before me, the subscriber, and makes oath that he deliv-

ered a true copy of the within citation to Henry M. Caldwell, president of the Elyton Land Co.

A. R. NININGER,
U. S. Marshall,
By J. W. BRUCE, *D'p'ty.*

Sworn to and subscribed the 14th April, A. D. 1890.
A. W. McCULLOUGH,
Clerk U. S. Cir. Court.

UNITED STATES OF AMERICA,
Northern District of Alabama, Southern Division.

I, A. W. McCullough, clerk of the circuit court of the United States of America in and for said division of said district, do hereby certify that the *following* is a true, full, and complete copy of all proceedings had in this court in case No. 69, Linda E. Timmons *et als. vs.* Elyton Land Company, as fully as the same does appear of record in my office.

Seal Circuit Court U. S., N. D. of Ala., Sou. Div.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at office, in the city of Birmingham, in said district, this 2nd day of August, A. D. 1890.

A. W. McCULLOUGH,
Clerk of the U. S. Circuit Court.

Endorsed on cover: N. Alabama C. C. U. S. No. 1325. Linda E. Timmons *et al.*, plaintiffs in error, *vs.* The Elyton Land Company. Filed September 29, 1890.

FILED.
MAR 2 1891
JAMES. H. McKENNEY,
CLERK.

MOTION TO DISMISS OR AFFIRM.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1325.

LINDA E. TIMMONS, ET ALS., PLAINTIFFS IN ERROR,

vs.

THE ELYTON LAND COMP'Y, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

Brief of THOS. H. WATTS, Sr., Counsel for Plaintiffs in Error.

In Supreme Court of United States.

No. 1325.

LINDA E. TIMMONS, *et als*, Plaintiffs in Error,

vs.

THE ELYTON LAND CO., Defendant in Error.

In Error to the Circuit Court of the United States for the Northern District of Alabama.

Brief and argument of T. H. Watts, Sr., for plaintiffs in error, in opposition to the motions made by the defendant in error, and to the brief and argument of Alex T. London, Esq.

To the Honorable, the Supreme Court of the United States:

1. As to Writ of Error:

Id est certum, quod certum reddi potest! This maxim applies as well to a writ of error as it does to a contract, or any written instrument.

The record (see record page 1) shows that the suit was originally brought in the names of Margaret Celia McElrath, Mary E. McElrath, wives of J. L. McElrath and Oliver T. McElrath, and Linda E. Timmons. The plaintiffs are stated, as Mary E. McElrath, Linda E. Timmons and Margaret Celia McElrath, in the statement of the case.

The summons and complaint were served on the defendant 14 May, 1887. See record page 2.

The defendant appeared and filed pleas. See record page 2.

It appears from the record, see record pages 4 and 5, that on the 16th of March, 1888, the parties came by their attorneys, and plaintiffs amended their complaint, *without objection*, by making James Hall, Eliza Hall, John Timmons, Sarah Timmons,

Caroline Timmons, Nancy Timmons, Melissa Timmons, Nancy Timmons, Amanda Morgan, Alfred Timmons, John F. Timmons, and Robert Timmons, parties plaintiff. This was done by *adding* the foregoing names as parties plaintiff:

The case is stated sometimes as Mary E. McElrath et al. v. Elyton Land Co., and sometimes, as *Timmons, et al.* v. Elyton Land Co See page 5 of record.

The agreement of counsel shown on page 5 of the record states the case as Timmons et al. v. Elyton Land Co.

On page 6 of record the case is stated as Mary E. McElrath, Margaret C. McElrath, Linda E. Timmons, John Timmons et al. v. Elyton Land Company, and this statement is made by the Elyton Land Co., by Alex T. London, and then follows a *further* answer and disclaimer to the original and *amended* complaint. There was no amendment to the complaint, except to add new parties plaintiff.

The case is then stated, on the several days of the trial from day to day, as Mary E. McElrath et al. v. The Elyton Land Company.

The bill of exceptions, on page 12 of the record states the case as Timmons' heirs vs. The Elyton Land Co.

It is shown in the complaint as amended that the persons named as plaintiffs, were the heirs of John Timmons, deceased, and it is stated in the bill of exceptions that it was proved, upon the trial, that the plaintiffs were the heirs of John Timmons, who died in 1855.

On page 15 of the record, Alex T. London, defendant's attorney, says: "I agree to the bill of exceptions, the copy of the will attached to be verified by the certified copy; March 18th, 1889."

This agreement is endorsed as the bill of exceptions, which states the case as Timmons' heirs v. the Elyton Land Co.

Now the writ of error is in the name of Linda E. Timmons et als. plaintiffs, and Elyton Land Company, defendant.

On page 12 of the record the following appears "Come the parties by their attorneys and the plaintiffs *herein* praying for an appeal to the Supreme Court of the United States, the same is by the court allowed and appeal bond fixed at sum of five hundred dollars."

Each part of the record may be referred to in order to see who are the plaintiffs in error, for the plaintiffs in the case are the plaintiffs in error.

The objection made, that because the statement of the case is Mary E. McElrath et als. plaintiffs, in some places, and Linda E. Timmons et als, and Timmons' heirs v. The Elyton Land Co, in others, this court does not know from the record, who are the plaintiffs, or the plaintiffs in error. The objection we respectfully submit, is *puerile*. There is just as much difference in the way the case is stated, and no more, than the difference between "Come out McCarty" and "McCarty, come out."

The record sets forth fully the names of the plaintiffs, and when it is said in the writ of error that Linda E. Timmons et als. v. The Elyton Land Co. take out the writ, does not the court know who are the plaintiffs in error, as well as it would if each plaintiff were named in the writ? Is it necessary to set out the name of each plaintiff every time the case is stated? When it is said the plaintiffs (Mary E, McElrath et als. v. The Elyton Land Co.) HEREIN pray for an appeal to the Supreme Court of the United States, will not the court take judicial notice, from the record, who are the plaintiffs? The writ of error runs in the name of Linda E. Timmons et als., plaintiffs. In the assignment of errors the case is stated Mary E. McElrath, Linda Timmons and others, Plaintiffs in error v. The Elyton Land Co., Defendant in error.

As well might it be said that the defendant in error is not stated, in each statement of the case, to be a *corporation*.

Is it necessary every time it is stated in the record that "plaintiffs appeared," to set out in full the *name* of each plaintiff? To do so would be an unnecessary amplification of the record. When it is said the plaintiffs came, this court knows that the persons named as plaintiffs came, as well as if every person were named.

The cases cited by Mr. London do not show that the writ of error was improperly taken in this case.

In the case of the Protector, 11 Wall. 82, it appears that William A. Freeborn, James F. Freeborn and Henry P. Gardner of the city of New York, merchants, filed libel," &c., there

is nothing showing that they sued as *partners*. The appeal was taken out in the name of William A. Freeborn & Co. The citation also directed the party to appear in the cause, wherein William A. Freeborn & Company were appellants. The appeal in such case was properly dismissed.

It is obvious, at a glance, that the case of Deneale v. Stump. 8 Peters, is wholly unlike the present one. But whatever may have been the decisions under the statutes before section 1005 of the Revised Statutes, it is certain now that any defect of the sort is amendable; "If the defect can be remedied by reference to the accompanying record."

See Moore v. Simonds, 100 U. S. 145.

If the writ of error in this case is held defective, because it does not set forth the names of each of the plaintiffs in the suit, we move to amend it. The record discloses fully who were the plaintiffs who prayed for and obtained the writ of error.

The name *Lydia* in one part of the printed record is a misprint for Linda; the original record will show this. There are several typographical errors in names, and words.

2. As to the bill of exceptions, and the assignments of error.

It is said that the bill of exceptions does not show that the exception to the introduction of the evidence, to which exception was taken, was taken during the progress of the trial, and before the jury retired.

The bill of exceptions is, to have a sensible construction given to it. What does it show? See record page 13.

"The defendants offered, as evidence, the affidavit made by said John Timmons on the 11th January, 1855, for the entry of the N. W. ¼ of S. W. ¼ of section 6, a copy of which, marked Exhibit B, is hereto attached as part of this bill of exceptions. The plaintiffs objected to its introduction as any evidence tending to show what the testator meant by the word "farm" used in the said last will. The court overruled said objection and admitted said affidavit *as evidence*; and to this action of the court the plaintiffs *excepted*." Does it not thus

appear that the plaintiffs objected and *excepted* whilst the case was being tried before the jury? No argument could make the matter plainer than the mere statement in the bill of exceptions.

It is argued that the exceptions taken to the charges given by the court do not appear to have been taken before the jury retired to consider of their verdict.

The argument is the height of hypercriticism. The judgment entry (see record on page 11) shows that "having heard the evidence by the parties adduced, arguments of counsel, and charge of the court, the jury return their verdict in writing," etc.

Now, the bill of exceptions (see record on page 14) after setting out all the evidence, uses this language: "Upon the evidence the court charged the jury, "that under the will of said John Timmons, the said Sarah Timmons took a fee, and that she had a good right to sell and convey the same, and that plaintiffs had no right to recover any one of said tracts of land. To this charge and ruling the plaintiffs excepted." Now, does it not appear that the exception was taken then and there? What follows immediately after this exception shows that the exception was taken to the charge when given: "The court further instructed the jury to find a verdict for the defendant, and to this ruling the plaintiffs excepted." The exception to the first charge was certainly taken before the second charge was given, and must therefore have been taken before the jury retired from the bar.

It appears as clearly as common sense requires, that each exception was taken to each charge when given, and must necessarily have been taken before the jury retired from the bar.

The authorities cited by the counsel for these motions do not support his argument, or they are wholly misapplied. The facts in each case must be looked to in order to see the applicability to the present case.

The case of Walton v. the United States, 9 Wheat, when examined, will not support the point made by the counsel. On page 657 of the case, it is said: "It is true that the bill of exceptions states that the evidence was *objected* to at the trial; but it is not said that any *exception* was taken to the decision of the

court. So that, in fact, it might be true, that the objection was made, and yet not insisted upon by way of exception."

In the case at bar, it is distinctly stated in the bill of exceptions that not only was the evidence offered *objected* to—it is stated that the court overruled the objection, and permitted the affidavit to be introduced as evidence, and to this action of the court the plaintiffs *excepted*.

The case of the United States v. Breitling, 20 Howard, shows very clearly that the exception in this case was properly taken. On page 253 of the case, after setting forth the evidence and the charge of the court, it is added, "to which charge the plaintiffs' counsel excepted." It was held that the exception was properly taken.

It was decided in that case, that, although the bill of exceptions showed *objections* to the testimony offered, the bill of exceptions did not show that there was any *exception* taken to the ruling of the court as to the admissibility of the evidence; and hence, the Supreme Court would not revise the matter. See what is said as to this matter on page 254 of the volume.

The case of the Mutual Insurance Company v. Snyder, 93 U. S., 393, simply sustains Breitling v. United States, 20 Howard *supra*.

The case of Stanton et al v. Embrey, 93 U. S., is not inconsistent with the views here presented. On pages 555–6, it is said, "Beyond doubt the record must show *expressly* or *impliedly* that exception was taken and reserved by the party at the trial," etc.

In the case of Simpson & Co. v. Dall, 3 Wall, 460, it was held that: "When a bill of exceptions at all fairly discloses the fact that exceptions were taken in proper time, this court will not allow the right of review by it to be defeated, because the bill uses words in the *present* tense, when the true expression of the court's meaning required the use of the past one; nor because the bill is unskilfully drawn, and justly open, philologically, to censure."

The case of Railway Co. v. Hech, 102 U. S., is not at all inconsistent with the views in this argument presented.

The case of Hunicut v. Peyton, 102 U. S. 333, fully supports this argument. On page 357 the court commences an

elaborate review of the question as to the bill of exceptions—and it continues to and includes page 359. In that case the court examines the case of Walton v. United States, 9 Wheaton, and the *dicta* therein are pointed out.

The case of the United States v. Carey, 110 U. S. 51, is not at all inconsistent with the views here presented. Chief Justice Waite, on page 52 says: "There is nothing whatever to indicate that any exception was taken to the rejection of the evidence complained of, until the next term after the trial was over, and the judgment rendered, though not signed." On page 51 of the volume, it will be seen that the judgment was rendered on the 17th of March, 1880, during the November term 1879. On the 19th of May, 1880, at the April term of that year, the District Judge signed the bill of exceptions. The bill of exceptions shows that on the trial the United States offered in evidence a document * * to the introduction of which the defendants objected, and that the objection was sustained. The bill of exceptions then proceeds as follows: "To which ruling of the court plaintiff *excepts* and tenders this his bill of exceptions," etc. It is clear then, that Chief Justice Waite was right. It did not appear, that the exception was taken on the trial of the case—but that though, there was an *objection*, there was no exception until the signing of the bill of exceptions at the subsequent term of the court.

The case of Phelps v. Meyer, 15 How. 160, another case cited by Mr. London, does not support his argument. Chief Justice Taney, on page 161 says: "But, although it appears, by the certificate of the judge, sent up as a part of the record, that these instructions were given, and refused at the trial, *yet it also appears that no exception* was taken to them * *. There is nothing in the certificate from which it can be inferred that this exception was reserved pending the trial and before the jury retired."

It is unnecessary to examine further the cases cited for the motions.

J. H. Wade, Sr

Office Supreme Court U. S.
FILED,
FEB 17 1891
JAMES H. McKENNEY,
CLERK.

MOTION TO DISMISS OR AFFIRM.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1325.

LINDA E. TIMMONS ET AL., PLAINTIFFS IN ERROR,

vs.

THE ELYTON LAND COMPANY, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

Brief of ALEX. T. LONDON, Counsel for Defendant in Error.



SUPREME COURT OF THE UNITED STATES.

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LINDA E. TIMMONS ET. AL., PLAINTIFFS IN ERROR,

vs.

THE ELYTON LAND CO., DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

To the Honorable, the Supreme Court of the United States:

Comes the Elyton Land Company, the defendant in error in the above entitled cause, by Alexander T. London, its counsel, and respectfully moves your Honors to dismiss the writ of error in said cause out of this Court, or to affirm the judgment of the Court below on the following grounds:

1. The writ of error is not sued out in the names of all the plaintiffs in the court below.
2. It is not shown by the record that all the plaintiffs in the court below prayed for the writ of error.
3. It is not shown by the record that the plaintiffs in error have reserved any exception by bill of exceptions, or otherwise.
4. It is not shown by the record that the exception to the admission of evidence, first assignment of error, was taken or reserved on the trial.
5. It is not shown by the record that the exception to the instruction or charge of the court, second assignment of error, was taken or reserved while the jury was at the bar.
6. It is not shown by the record that the exception to the instruction or charge of the Court, third assignment of error, was taken or reserved while the jury was at the bar.

The motions are made under Par. 5 of Rule 6, and where there is color of right for dismissal the Court will entertain motion to affirm.

Micas *v* Williams 104 U. S., 556.

In support of these motions, I respectfully submit the following:

FIRST.

The writ of error is sued out in the name "Linda E. Timmons *et als.*, plaintiffs." (Record, p. 17.)

The assignment of errors is in a cause entitled, "Mary E. McElrath, Lydia Timmons and others, plaintiffs in error." (Record, p. 16.) The writ of error in the name of Linda E. Timmons *et als.* is clearly defective, and this Court, since the decision in Deneale *v* Archer, 8 Peters, 526, down to the case of The Protector, 11 Wall. 82, have held that for this defect a writ of error will be dismissed.

SECOND.

It is not shown that what is attempted to be set up as a bill of exceptions ever was reserved on the trial of the case certified in the record. By the record it appears that Mary E. McElrath, Linda E. Timmons and Margaret Celia McElrath brought the suit (Record, p. 1), and the case which was tried is entitled "Mary E. McElrath *et als.* against the Elyton Land Company." (Printed Record, p. 7.) In each adjournment of the Court, from day to day, the case is entitled: "Mary E. McElrath, *et als.* (Printed Record, pp. 8, 9, 10 and 11), and in the judgment rendered the case is entitled, "Mary E. McElrath *et als.*" (Printed Record p. 11), while what purports to be the bill of exceptions is entitled, "Timmons' Heirs against the Elyton Land Company." (Printed Record, p. 12.)

I respectfully submit that there is no evidence in the record to show any connection between the parties to the suit and the parties in the case stated in the caption of what purports to be the bill of exceptions. There being no error shown, this Court has nothing to examine. Error cannot be presumed.

Burr *v* Railroad Company, 1 Wall, 99.
Kearney *v* Denn, 15 Wall, 51.
Railroad Company *v* Hanning, 15 Wall, 649.
Greenwood *v* Randall, 111 U. S., 775.

THIRD.

The rule is that where in error to the Circuit Court there is no sufficient assignment of error, as by bill of exceptions or the like, and there is no error apparent in the record or otherwise so shown that the Court can notice it, the judgment will be affirmed.

Suydam *v* Wilson, 20 How., 427.
Taylor *v* Morton, 2 Black, 481.
Pomeroy *v* Bank of Ind., 1 Wall. 592.
Generes *v* Bennemer, 7 Wall. 564.
James *v* Mobile Bank, 7 Wall. 692.
Reilly *v* Golding, 10 Wall. 56.

The plaintiffs in error have undertaken to set out three exceptions, the first of which is as follows:

> "Defendants offered as evidence the affidavit made by said John Timmons on the 11th day of January, 1855, for the entry of the northwest quarter of the southwest quarter of Section 6, a copy of which, marked exhibit 'B,' is hereto attached as part of this bill of exceptions. The plaintiffs objected to its introduction as any evidence tending to show what the testator meant by the word 'farm' used in the said last will. The Court overruled said objection and admitted said affidavit as evidence, and to this action of the Court plaintiffs excepted." (Printed Record, p. 13.)

This constitutes the first assignment of error. (Printed Record, p. 16.)

It has been well settled by a long line of decisions, beginning with Walton *v* the United States, 9 Wheaton, that before this Court can consider an objection to evidence, it must appear from the record that the objection was made at the trial, and the ruling of the court then and there excepted to. As said in the case cited, page 657:

> "It is true that the bill of exceptions states that the evidence was objected to at the trial, but it is not stated that any exception was then taken to the decision of the Court, so that in fact it might be true that the objection was made and yet not insisted upon by way of exception."

In Sheppard *v* Wilson, 6 How. 260, the opinion in the case of Walton *v* the United States is quoted and approved. In Turner *v* Yates, 16 How. 14, 28, it appeared that certain evidence was offered, objected to and admitted, and the bill of exceptions showed that the defendant excepted during the trial immediately after the Court had so decided, and yet this Court held that the record must show that "the exception was taken at that stage of the trial when its cause arose."

In United States *v* Breitling, 20 How. 252, 254, this Court says:

> "The exceptions state that he made the objections which have been argued here, and that the Court overruled them, but the fact that he made the point at the trial and the Court decided against him is not sufficient to bring the question before this Court. He must show that he excepted to the opinion, and as there is no evidence that he did so while the jury were at the bar, the objections to the testimony of the witnesses are not before us."

In Pomeroy *v* Bank of Indiana, 1 Wall. 592, the language of this Court is:

> "Where the objection is to the ruling of the Court, it is indispensable that the ruling should be stated, and it should also be alleged that the complaining party then and there excepted to the same."

Stanton *v* Embrey, 93 U. S. 548, 555, is to the same effect. It is there said:

> "The established rule is, that the exception must show that it was taken and reserved by a party at the trial, but it may be drawn out in form and signed or sealed by the Judge at a later period," citing United States vs. Breitling, *supra*. Again:

> "Beyond doubt, the record must show expressly or impliedly that the exception was taken and reserved by the party at the trial, and it is only when "the exception is seasonably taken and reserved," that it can be considered in the bill of exceptions. p. 556.

In Insurance Company *v* Boon 95 U. S. 117, 142, this Court said:

> "It is a settled principle, say the Court in Walton *v* U. S. 9 Wheat, 651, cited by defendant, that no bill of exceptions is valid which is not for matter excepted to at the trial. We do not mean to say, remarked the Court, in that case, that the bill of exceptions should be formally drawn and signed before the trial is at an end; it will be sufficient if the exceptions be taken at the trial and noted by the Court with the requisite certainty, and where this is done it may be reduced to form and signed by the Judge during the term." Again: "Valid exceptions can never be allowed unless taken at the trial, and they will not be sustained unless completed within the term."

In United States *v* Carey, 110 U. S., 51, an objection was made on the trial to the introduction of evidence which was sustained, and the bill of exceptions proceeded as follows: "To which ruling of the Court plaintiff excepts." Chief Justice Waite, in delivering the opinion, says:

> "The rule is well established and of long standing, that an exception, to be of any avail, must be taken at the trial, but the fact that it was seasonably taken must appear affirmatively in the record by the bill of exceptions duly allowed or otherwise," citing in addition to the cases which I have cited, Phelps *v* Mayer, 15 How. 160; French *v* Edwards, 13 Wall, 506; Hunnicutt *v* Peyton, 102 U. S. 333.

In Railway Company *v* Heck, 102, U. S. 120, Chief Justice Waite says:

> "The theory of a bill of exceptions is that it states what occurred while the trial was going on. Time is usually given to put what was done into an appropriate form for the record, but unless this objection was made and exception taken before the verdict, no case is presented for review here of the rulings of the trial. This has been well settled in this Court since Walton *v* United States, 9 Wheaton, 651. The cases are numerous to that effect."

What purports to be the exception set out in the record is not shown to have been taken on the trial or at any time until after the judgment. It appears affirmatively by the record that on the 19th day of March the trial of the case was begun, and that the trial continued until the 27th day of March, each adjournment being shown in the record from pages 7 to 11 printed record. How can the court say that the exception undertaken to be reserved, was taken at the trial at the time the evidence was offered? It does not appear that the plaintiffs at the time the objection was made, *then* excepted, nor can the Court know from the record affirmatively that the exception was ever taken until the 28th day of March, which was the day after the judgment was rendered, but during the term of the Court.

FOURTH.

The other two grounds of the motion to affirm may be considered together, as they really involve the same question.

The second assignment of error is that the Court erred in charging the jury "that under the will of said John Timmons the said Sarah Timmons took a fee, and that she had a good right to sell and convey the same, and that the plaintiffs had no right to recover any one of the said tracts of land." (Printed record, p. 16.) The exception to this charge is stated as follows: "To this charge and ruling plaintiffs excepted." (Printed record, p. 14.) And the third assignment is to the instruction to the jury to find a verdict for the defendant (Printed record, p. 16.), and the exception is stated as follows: "And to this ruling the plaintiffs excepted." (Printed record p. 14.)

The rule in this Court is that no instruction to the jury given or refused, can be brought here for revision unless the record shows that the exception to it was taken or reserved while the jury was at the bar.

In Phelps *v* Mayer, 15 Howard, 160, this direct question was presented. Chief Justice Taney says:

> "It has been repeatedly decided by this Court that it must appear by the transcript, not only that the instructions were given or refused at the trial, but also that the party who complains of them excepted to them while the jury were at the bar. The Statute of Westminster, 2, which provides for the proceeding by exception, requires in explicit terms that this should be done, and if it is not done, the charge of the Court, or its refusal to charge as requested, form no part of the record, and cannot be carried before the appellate court by writ of error." Again, says the Chief Justice: "Nor is this a mere formal or technical provision. It was introduced and is adhered to for the purposes of justice, for if it is brought to the attention of the Court that one of the parties excepts to his opinion, he has an opportunity of reconsidering or explaining it more fully to the jury, and if the exception is to the evidence, the opposite party might be able to remove it by further testimony if apprised of it in time."

This well-considered case has been affirmed in Bryan *v* Forsyth, 19 Howard, 334: Barton *v* Forsyth, 20 Howard 532; Mutual Life Insurance Company *v* Snyder, 93 United States, 393.

Respectfully submitted.

ALEX. T. LONDON,
Counsel for Defendant in Error.

In the Supreme Court of the United States.

No. 1,325.

LINDA E. TIMMONS ET AL.,
Plaintiffs in Error.
vs.
THE ELYTON LAND CO.,
Defendant in Error.

In error to the Circuit Court of the United States for the Northern District of Alabama.

To Thomas H. Watts, Esq., Counsel for Plaintiffs in Error:

You will please take notice that I shall on Monday, the 23d day of February, next, move the Court to dismiss the writ of error or affirm the judgment of the Court below, in the above entitled cause, on the grounds set forth in the accompanying brief or argument.

ALEX. T. LONDON,
Counsel for Defendant in Error.

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 223.

JOSEY UNDERWOOD AND WARNER UNDERWOOD, BY THEIR NEXT FRIEND, FANNY U. GRIDER; AND W. H. CUNDIFF, ADMINISTRATOR OF JAMES H. R. CUNDIFF, DECEASED, APPELLANTS,

vs.

HARRIETT J. DUGAN, W. P. DUGAN, DANIEL D. DUGAN, GEORGIE SHANNON, WILLIAM M. SHANNON, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

FILED OCTOBER 13, 1887.

In the Supreme Court of the United States.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

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1 MONDAY, *January* 12, 1885.

Be it remembered that there was opened and begun to be holden a regular term of the United States circuit court of the fifth circuit and northern district of Texas, at the city of Dallas, in Dallas county, in said circuit and district, on the 12th day of January, A. D. 1885, it being the second Monday in said month in said year and the day fixed by law for commencing a regular term of said court at said place—present, Honorable Andrew P. McCormick, United States district judge for the northern district of Texas, presiding; J. C. Bigger, United States attorney for said district; J. A. McKee, United States marshal for said district, and A. J. Houston, clerk of said court—when and where the following proceedings were had, to wit:

2 UNITED STATES OF AMERICA, }
Northern District of Texas. }

To the judges of the circuit court of the United States for the fifth circuit and northern district of Texas, at Dallas:

Ira Underwood, Josey Underwood, and Warner Underwood, citizens of the State of Kentucky, residing in the county of Logan, in said State, and James H. R. Cundiff, a citizen of the State of Missouri, residing in the city and county of Saint Louis, in said State, bring this their bill against Harriett J. Dugan, William P. Dugan, Daniel D. Dugan, Georgia Shannon and her husband, William M. Shannon; Geo. H. Dugan, Mollie J. Dugan, a minor, all of whom are citizens of the State of Texas, residing in the county of Grayson, in said State, and Sarah E. March and John A. March, citizens of the State of Texas, residing in the county of Rusk, in said State, and George March, Webster March, Wilburn March, Murphy March, Carrie March, and Maud March, all of whom are minors and citizens of the State of Texas, residing in the county of Rusk, in said State, and Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, B. F. Luterell, H. C. Luterell, William Tucker, James Holt, and J. D. Parnell, all of whom are citizens of the State of Texas, residing in the county of Montague, in said State; W. G. Salmon, a citizen of the State of Texas, residing in the State of Texas, county of Montague, in said State, and Lottie Salmon, a minor and a citizen of the State of Texas, residing in the county of Montague, in said State, and A. M. Robbins, a citizen of the State of Texas, residing in the county of Gaudalupe, in said State; and thereupon your ora-

3 tors complain and say that heretofore, on, to wit, the 1 day of March, in the year of our Lord one thousand eight hundred and thirty-eight, one Phineas Y. Robinson, *alias* Fineas Robinson, was a resident citizen of the Republic of Texas and a married man, and had been such and so residing from the — day of January, A. D. 1835, and as such he was entitled, under and in pursuance of the laws of said Republic, to have located, surveyed, and titled to him one league and labor of land out of the public domain of said Re-

public; that said Robinson then resided in the county of Houston, in said Republic, and on the first of March, one thousand eight hundred and thirty-eight, he appeared before the board of land commissioners of said county and, having proved, according to law and to the satisfaction of said board, the existence of the facts entitling him to that favor, he received from said board, in the name of Fineas Robinson, a certificate, No. 127, for one league and labor of land; that afterwards, on, to wit, the 5th day of March, 1838, the said Phineas Y. Robinson, for a valuable consideration by him received, sold, assigned, and delivered said certificate to one Warner L. Underwood, and made and endorsed on the back of said certificate a written transfer thereof in substance as follows, to wit:

"For value rec'd, I assign and convey unto Warner L. Underwood the within certificate, as per deed, also of the date March 5th, 1838.

Teste: PHINEAS Y. ROBINSON.

4 GEO. ALLEN.
OSCAR ENGLEDANE.
H. B. DANCE."

That on the same day that said certificate was so endorsed, transferred, and delivered, to wit, the 5th day of March, 1838, the said Phineas Y. Robinson, in pursuance of the recital "as per deed, also of the date March 5th, 1838," and for the expressed consideration of five thousand dollars therein recited by him to have been received from said Warner L. Underwood, made, executed, and delivered to said Warner L. Underwood the deed of him, the said Phineas Y. Robinson, conveying to said Warner L. Underwood the aforesaid land certificate, "together with all rights, interest, and benefits in anywise pertaining to the ownership of said certificate, as well also as all lands and tenements resulting from the same," reserving one-half of the league covered by said certificate for the use and benefit of Joshua Robbins, to whom the same (as said deed recited) had been before that time sold, but not one-half of the labor, which was by said deed granted, "severally & alone," to said Warner L. Underwood, and by said deed authority was given said Warner L. Underwood to take out and procure a patent for said league and labor of land in his own name; that said deed was subscribed by the same three persons whose names are subscribed as witnesses to said transfer of said certificate as witnesses to said deed, and shortly afterwards, on, to wit, the 16 day of
5 March, 1838, H. B. Dance, one of the said subscribing witnesses, appeared before the Honorable Charles L. Taylor, chief justice and *ex officio* notary public of the county of Nacogdoches, in the Republic of Texas, and proved up the execution of said deed, and directly thereafter, on, to wit, the 15th day of June, A. D. 1838, the said deed was duly recorded in the office of the clerk of the county court of Milam county, in said Republic; and afterwards, on, to wit, the 12 day of November, 1855, the clerk of the county court of said county of Milam made out and certified under his official seal a true copy of said deed from records of his office, which copy was after-

wards filed for certain purposes in connection with said land certificate in the general land office of the State of Texas, at Austin, where it has been ever since and still remains an archive of said office, and the records of deeds, &c., of said county of Milam have been since the 12 day of November, 1855, destroyed by fire, including in such destruction the record of said deed to said Underwood, so that no copy thereof can be now obtained, and none is now in existence save said copy filed in the general land office of Texas. In explanation of the recital in said deed to Warner L. Underwood that one-half of the league covered by said certificate was reserved for the use and benefit of Joshua Robbins, to whom the same had been before the execution of said deed sold, your orators allege that on, to wit,

6 the 19th day of November, A. D. 1837, the said Phineas Y. Robinson, for and in consideration of the expressed sum of two hundred and eleven dollars by his deed of that date duly executed and delivered, sold and conveyed to Joshua Robbins "a certain tract of land lying and situate in Robinson's colony," and described by metes and bounds in said deed, and being shown by said description to be included within four lines, each 5,000 varas long, said deed concluding with the following words written after the date thereof and immediately preceding the signature of said Phineas Robinson, to wit: "The above is my head-right which I emigrated to Texas under;" which said deed, having been duly proved and recorded, is now in the possession of your orators.

That said deed was made before the issuance of said certificate, and was not proved for record or recorded until 1853; that circumstances indicate it was at one time the purpose to locate the said land certificate on the land described in said deed, and they also indicate that said certificate was at one time held in what was then Milam county, in said Republic, but there is such obscurity thrown over that period of the history of such title by the condition of the country then and since and by the condition and situation of the parties in interest and their subsequent deaths, as well as by the frauds and contrivances hereinafter referred to, that it is now impossible

7 fully to explain every minute particular about the location of said certificate and the transfers thereof; but your orators charge that the land described in said deed was never fully and legally appropriated by said certificate, and such appropriation as there may have been was abandoned, and said transfer to said Robbins only had the effect to convey to him an equitable interest in said certificate, which, not being put upon record, was not notice to said Warner L. Underwood at the date of the transfers made to him as aforesaid and in fact the said Warner L. Underwood did not have, at the date of the transfer and delivery of said certificate to him as aforesaid and of the making and delivery of said deed, any notice, actual or constructive, of the existence or making of such deed to said Robbins or of the sale to him of any interest in said certificate, save the aforesaid statement and recital in said deed to him that one-half of said league had been previously sold by said Robinson to said Robbins, and in fact your orators charge that when said land was abandoned or lost as the land on which said certificate was or was

to be located one-half of the league was all the interest he, the said Robbins, had or was equitably entitled to have in said certificate, and was all that he was recognized to have by said Robinson
8 and said Underwood, and was all that has ever been since or is now asserted by said Robbins, his heirs or his or their vendees, or any of them.

Your orators further aver that while it may be true, according to the strict rules of law, and owing to the mistakes and ignorance of the law at the early date when said transactions were had, as well as the destruction and suppression of evidence; the death of some, and in fact all the original parties to said transaction, and the destruction, loss, and suppression of papers, and other fraudulent acts of those hostile to the title of your orators, that it cannot now be shown that said deed to Warner L. Underwood was legally recorded, or that such a copy of it can now be produced as under such strict rules of law would be evidence of its existence and contents, yet they allege and charge that it was executed and delivered and has been lost or destroyed and cannot be procured after the most diligent search and enquiry made by your orators, but they say they have in their possession the original deed aforesaid to Joshua Robbins, and said original certificate and said transfer thereof are now on file in the general land office in the State of Texas, and sufficiently prove within themselves the title to the land in controversy as being in your orators to the extent alleged in this bill, and if said last deed to said Warner L. Underwood cannot now be procured
9 or produced, and if the same was not duly proved or properly recorded to allow it to speak as conclusive proof of its contents, yet the fact of its open production and attempted proof and record contemporaneously with the occurrence of the other facts referring to it, and while all the actors in the transaction were living, are circumstances which your orators are advised may be alleged and considered in connection with the other facts of the transaction in regard to said land certificate as conducing to show its sale and delivery and the purposes of the same.

Your orators allege that the said Warner L. Underwood, who, at the date of said transfer and deed to him, resided at Nacogdoches, in the Republic of Texas, very soon thereafter went from Texas to the State of Kentucky with his family, intending soon to return again to Texas, but business, ill health, and other causes delayed and prevented his return, until finally he died, in 1867, without having ever returned to Texas from the time he left as aforesaid.

Your orators charge that by reason of his long and unanticipated absence, the disturbed conditions of the country, his ill health, and the bad faith and frauds of persons who found access to his papers they were misplaced, lost, abstracted, and destroyed. After said sale and transfer of his said certificate to said Underwood said Robinson ceased to assert any ownership or claim whatever in or to
10 *to* said land certificate or any land by virtue thereof, but, on the contrary, he very soon thereafter emigrated from the State of Texas to the State of Arkansas, in which State he lived a great number of years, and finally died there without ever returning to

Texas, and without ever, so far as your orators are advised or can learn, denying his reported act of sale of his said head-right certificate or expressing any dissatisfaction therewith, but, on the contrary, as often as your orators can hear of his referring to the same at all, he made no secret of having sold the same. In the mean time said certificate appears to have been located upon public land in the county of Grayson, State of Texas, having been, as your orators charge, placed by said Warner L. Underwood for the purpose of being located, surveyed, and returned to the general land office of the State of Texas for patenting in the hands of one J. P. Dumas, then the surveyor or deputy surveyor of the land district in which said county of Grayson was situated, with the said endorsed transfer thereof to the said Warner L. Underwood plainly written and visible thereon; that said Dumas, in violation of his duty and obligations, and without authority or consent of said Warner Underwood,

11 and with the fraudulent intent and purpose of destroying and cancelling the right and title of the owners of said certificate to it and to the land located under it, failed and refused to do the acts necessary to secure a patent for said land, but, on the contrary, he and those with whom he was so fraudulently concerting contrived and allowed said land to be appropriated by another certificate.

And the said Dumas, still further contriving to cheat and defraud said Warner L. Underwood and Joshua Robbins, and combining, confederating, and conspiring for that purpose and to that end with Dennis Trammel and Squire W. March, first fraudulently canceled said transfer endorsed as aforesaid on said certificate, and then, as your orators are informed and believe and charge, forged or caused to be forged a pretended quitclaim deed from said Robinson to said Dennis Trammel for said certificate, and afterwards said Dennis Trammel, having conveyed his pretended interest in the same to said Marsh, he, the said March, had said certificate located and surveyed on the land hereinafter described, in the county of Montague, in the State of Texas, and having had said certificate, with said endorsed transfer thereof, completely concealed from view by having a piece of brown paper pasted over the same for the sole purpose of obscuring and concealing such transfer, together with said fraud-

12 ulent deeds from said Robinson to said Trammel and from said Trammel to said March, and the field-notes of said Montague location returned to the general land office of the State of Texas, applied to the commissioner of said general land office for a patent to him, the said S. W. March, as assignee, for said land in Montague county, and said commissioner, being ignorant of said fraudulent devices and deceived thereby, unlawfully and improperly issued and delivered to said S. W. March a patent for said land in the name of said S. W. March as such assignee; and even if your orators are in error, as they do not believe they are, in charging that said Dumas, Trammel, and March were all concerned in concealing said endorsed transfer of said certificate, one of them, the said Dumas, as your orators are informed, believe, and charge, did it, and the said March, before the date of his pretended pur-

chase of said certificate, had both actual and constructive notice of said endorsed transfer, and if said March paid any money or other valuable consideration for said certificate, which your orators deny that he did, and charge that if he pretended to pay any consideration for said certificate, or if said Dennis Trammel pretended to so pay any such *such* payment so made by both and each of them inconsiderable in amount and not the value or near the value of said certificate, and was made with the full knowledge of the frauds that had been and were then being committed in and about the
13 same, and that said certificate had been transferred to and was the property of said Underwood, for the benefit of himself and the said Robbins, and that they had and could acquire no title to the same from the said Robins or from each other, and if any money or valuable consideration passed between either or any of said parties as a pretended consideration for the transfer of said certificate it was, in fact, only a division among themselves of the spoils of their unlawful confederacy.

Your orators further charge that if it be not true that said Dumas, Trammel, and March were all engaged in forging said deed or quitclaim from said Robinson to said Trammel, then they charge that one of them, to wit, the said Dennis Trammel, committed and perpetrated said forgery or caused it to be done; or if, contrary to all these allegations and the true belief of your orators, said quitclaim deed from said Robinson to said Trammel was not forged at all, but was the act of said Robinson, as it purports to be, still they charge that said Robinson having, long before he executed the same, conveyed all his right and title to said certificate to said Underwood, his said deed conveyed no right or title to said Trammel and he conveyed none to said March.

Your orators say they and their vendors and their agents have for years made diligent search and enquiry in all places and
14 of all persons they believed likely to have the same for said deed of March 5, 1838, from said Robinson to said Underwood, including in said search and enquiry the widow and legal representatives and children of said Warner L. Underwood, their friends, agents, and attorneys, without being able to find it, and they do not now know what has become of it, unless, falling into the same unfriendly hands that undertook and accomplished the concealment and suppression of said endorsed transfer of said certificate, it, too, has been by them suppressed or destroyed, and if it is now in the possession, control, or knowledge of any of the defendants or their attorneys or agents they are now notified to produce the same, and in the event of their failure to do so your orators will offer secondary evidence of its contents on the hearing of this bill.

Your orators, from the best information they are able to obtain, believe, and they so charge, that, owing to the absence from the Republic and State of Texas of said Warner L. Underwood and his being thus compelled to rely upon information derived from others, he was not made aware of the fraudulent acts and doings aforesaid by which his title to said land certificate and the land on which the same was located was being concealed, obscured, and destroyed until

he was informed thereof, about the 15th day of May, 1860, by a letter written him from Milam county, State of Texas, by one
15 James Jeffries, who then announced to him that through the agency of a friend at Austin (meaning the capital of the State of Texas) he had found his, the aforesaid, certificate in the land office at Austin, with a yellow paper pasted over the back thereof, thus cancelling the transfer endorsed thereon without any apparent necessity therefor, and had prevailed on the commissioner of the general land office of Texas, in whose office and whose custody said certificate then was, to take said paper off from the back of said certificate, which being done the aforesaid transfer appeared plainly written thereon, and that a patent had issued to said S. W. March on said certificate for land in Montague county, in said State of Texas, under a transfer from P. Y. Robertson, which was no doubt a forgery, and promising to engage lawyers and have a suit instituted to set aside said fraudulent transfer.

Your orators are informed, believe, and charge that such a suit was shortly after that time instituted in the district court of Grayson county, State of Texas; but, whether such suit was commenced or not, the war between the States which soon afterwards begun closed the courts and prevented the institution of suits and obstructed and delayed the prosecution of such as were already commenced, and before relations were fully restored between the hostile States
16 and before the courts in the State of Texas had been fully reopened, to wit, on the — day of ——, A. D. 1867, said Warner L. Underwood died at his residence, in the State of Kentucky, intestate as to said land, which descended to his widow and children as his heirs-at-law; that some of his children were then minors and so continued to be until a short time before the institution of this suit; some were married women at his death and have so continued a greater portion of the time since, and others of them died subsequent to their father, leaving children, who have taken by inheritance the interest of their deceased parent in said land and land certificate; so that the names, ages, and relationship of the heirs of said Warner L. Underwood are now as follows—that is to say, at the date of his death he left surviving him his widow, Mrs. Lucy C. Underwood, and the following-named children: Frances Underwood, a daughter, aged 47 years now, who married B. C. Grider May 31, 1853, and who, dying in February, 1872, left the said Frances a widow; Juliette Underwood, a daughter, now aged 44 years, and who on June 22, 1859, married William W. Western, who, dying July, 1870, left his wife, the said Juliette, a widow; Lucy Underwood, a daughter, aged now 41 years, married her husband, F. J. McCann, on Nov'r 3, 1856, who is still living; Josie Underwood, a daughter, now aged 39 years, married her husband, Charles A. Mazro, on October 26, 1870; both are still living; Warner Underwood, a son, was
17 born in December, 1845, and died October 16, 1874, leaving surviving him as his sole heirs-at-law to inherit said land certificate and land his widow, Ida Underwood, and two children, named respectively Josie Underwood, now aged 10 years, and War-

ner Underwood, now aged 6 years, who, with their mother, the said Ida, are complainants in this bill and sue by her as their next friend; Henry L. Underwood, a son, who was born the 22 day of February, 1848, and is still living; John Underwood, a son, who is now aged 26 years; Mary Underwood, a daughter, who is now aged 22 years and who married her husband, Sam. M. Poyntz, on the 30th day of October, 1878; that all of said heirs of said Warner L. Underwood who do not unite in this bill as complainants have before the filing of this bill, by their joint and several deeds, duly executed and delivered, and for a valuable consideration, sold and conveyed all their right, title, and interest in and to said land certificate and the land located by virtue thereof in Montague county to William H. Cundiff, and he, the said William H. Cundiff, by his deed, duly executed and delivered before the filing of this bill, and for a valuable consideration, conveyed all of his right, title, and interest in and to said land certificate and the land located and patented thereunder acquired by him through said conveyances from the heirs of
18 said Warner L. Underwood, as well as the interest of the widow and heirs of Joshua Robbins, also conveyed to him, as hereinafter alleged, to the other complainant in this bill, the said James H. R. Cundiff, so that the four complainants in this bill own all of said land save and except the one undivided one-fourth of one-fourth of the said league which belongs to defendant A. M. Robbins, who is a son and one of the heirs-at-law of said Joshua Robbins, he, the said Joshua Robbins, having died on the — day of ——, A. D. —, intestate as to said land, and leaving surviving him as his sole heirs-at-law his wife, Nancy Robbins, and the children hereafter named; that said Nancy was the wife of said Joshua Robbins at the date of his purchase of said half interest in said certificate, and thus became and was the owner of one-half of said purchase, or, in other words, one-fourth of a league of said certificate, and after the death of said Joshua said Nancy married James B. Durham, and with him conveyed her interest to said W. H. Cundiff. Said children are as follows: Lucinda E. Allen, a daughter of said Joshua Robbins and the wife of James Allen; Mary M. Webb, a daughter of said Joshua Robbins and the wife of James Webb; George Robbins, a son of said Joshua Robbins, and the said Allen M. Robbins, a son of said Joshua Robbins, all of whom, except the said Allen M. Robbins, have by their deeds, duly executed
19 and delivered for a valuable consideration, sold and conveyed their interest in said certificate and land to said William H. Cundiff, who by his deed, duly executed and delivered, has sold and conveyed the interest so sold and conveyed to him to complainant James H. R. Cundiff. Complainants further aver that said land certificate was recommended as genuine by the traveling board of land commissioners appointed under the act of the congress of the Republic of Texas to detect fraudulent land certificates.

That said land certificate has, as aforesaid, been located on land lying in the county of Montague, in the State of Texas, and said land has been surveyed and the field-notes thereof and said certificate have been returned to the general land office of the State of

Texas, and a patent for said land has been issued by the said State as aforesaid. Said land so located, surveyed, and patented is described by metes and bounds as follows, to wit: "In Cook—now Montague—county, on Red River, about 32 miles N. 55° W. from Gainesville, beginning at a stake on the bank of Red River, Thomas Scott's N. W. corner, from which a bur oak bears N. 39° W. 20 varas; an elm bears N. 44° E. 3 varas; thence south 4,018 varas, Scott's S. W. corner; 9,672 varas to corner; thence west 2,550 varas to corner; thence north 10,720 varas to a stake on the bank of the river, from which a cottonwood bears S. 10° E. 80 varas; another bears N. 74° W. 14 varas; thence down the river, with its meanderings, to the place of beginning"—said patent having been issued to said S. W. March by reason of the fraudulent transactions and false and forged transfer aforesaid. Said land is of the value of fifty thousand dollars. Complainants are informed and believe and charge that only certain specific portions of said land have ever been occupied by defendants or any of them, and a large portion of the same has never been actually occupied by any of the defendants. Some of the defendants have never been and are not now occupants or in actual possession of any portion of said land; but all of said defendants, except defendant A. M. Robbins, claim, in some form, under and through said fraudulent and void patent to said S. W. March, either as heirs and devisees of said March or under deeds, leases, or conveyances from him or from his devisees, heirs, or vendees, and said patent and deeds, leases, conveyances, and holdings are clouds upon complainants' titles and a fraud on their rights.

Complainants file herewith as part of this bill the following exhibits, the originals of which, where there are such originals, will, if they can be procured, be offered in evidence on the hearing of this bill, and the defendants are now notified to produce such of them as are or shall be in their possession or power, and where the originals cannot be procured said copies will be offered in evidence at the hearing:

21 1st. A copy of the original certificate *certificate* issued by the board of land commissioners of Houston county to Phineas Robinson and the transfer to Warner L. Underwood endorsed thereon.

2nd. Certificate of S. Bostick, Co. clerk of Grayson county, dated 2 November, 1853, of the recommendation of s'd certificate by the traveling board of land commissioners.

3rd. A certified copy of the deed from Phineas Robinson to Warner L. Underwood, dated 5 March, 1838, for said land certificate.

4th. A certified copy of the deed from Phineas Robinson to Joshua Robbins, dated the 19 day of November, 1837.

5th. The original deed from Phineas Robinson to Joshua Robbins, dated 19 day of November, 1837, in a mutilated condition.

6th. Original deed from James B. Durham and Nancy Durham and others, heirs of Joshua Robbins, to W. H. Cundiff, dated 21st day of November, 1870.

7th. Original deed from Lucy C. Underwood, Fanny V. Grider,

Josie N. Nazro, Charles A. Nazro, Mary U. Poyntz, and John Underwood to W. H. Cundiff, dated the 12 May, 1880.

8th. Original deed from F. J. McCann and Lucy U. McCann to W. H. Cundiff, dated 15 December, 1879.

9th. Original deed from Juliette N. Western to W. H. Cundiff, dated 17 day of May, 1880.

10. Henry L. Underwood's original deed to W. H. Cundiff, dated 4 day of June, 1880.

22 11. Original deed from W. A. H. Miller and John Dowell, as agents of Mrs. Lucy C. Underwood and others, children of Warner L. Underwood, to W. H. Cundiff, dated 20 March, 1877.

12. Original power of attorney from Mrs. L. C. Underwood and others to Miller and Dowell, dated 22 August, 1873.

13. Original deed from W. H. Cundiff to James H. R. Cundiff, dated 26 August, 1879.

14. Original letter from James Jeffries to Mr. W. L. Underwood, dated Cameron, Milam Co., Texas, May 15, 1860.

15. A certified copy of the last will of S. W. March and of the proceedings of the county court of Rusk county, State of Texas, probating said will.

16. A certified copy of the last will of George H. Dugan.

17. Certified copy from the general land office of Texas of the affidavits proving the execution of the transfer of said certificate to Warner L. Underwood.

18. A certified copy of the patent to S. W. March for the land in controversy, located in Montague county.

All which actings, doings, and pretences are contrary to equity and good conscience and tend to the manifest wrong and injury of your orators in the premises.

In consideration whereof and forasmuch as your orators can only have adequate relief in the premises in a court of equity, your orators bring this their bill and pray that said defendants be required to make answer thereto, but not under oath, and that

23 at the hearing hereof your honors will decree that the title and right of possession to said tract of land lying in said county of Montague is in your orators and in said defendant, A. M. Robbins, in the manner and to the extent alleged in this bill, and that as between your orators and said defendant, A. M. Robbins, partition of said land be decreed and commissioners to make the same be ordered, setting apart to each one of your orators and defendant Robbins the interest in severalty to which each one is found to have title.

And that all titles or pretended titles, deeds, and leases of any and all of the defendants and of those under whom they hold, except the defendant A. M. Robbins, be declared and held null and void and be cancelled and set aside, and that your orators and defendant Robbins be put in possession of the land to them severally allotted in such partition.

And that your orators recover of defendants their costs in this behalf expended, and that they have all such other or further relief

as the premises or nature and circumstances of their case shall require and to your honors shall seem meet.

And your orators pray for the process of subpœna against each of the following-named defendants—that is to say, Harriet J. Dugan, William P. Dugan, Daniel D. Dugan, Georgia Shannon and her husband, William M. Shannon, and Mollie J. Dugan, an infant under age; George H. Dugan, Sarah E. March, John A.
24 March, George March, an infant under age; Webster March, an infant under age; Murphy March, an infant under age; Carrie March, an infant under age, and Maud March, an infant under age; and Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, B. F. Luterell, H. O. Luterell, William Tucker, James Holt, J. D. Parnell, W. G. Salmon, Lottie Salmon, an infant under age, and A. M. Robbins—citing them to appear and plead, answer, or demur to this bill, but not to answer under oath.

And your orators further pray for an order requiring all defendants to this bill whose residence is alleged to be outside of the northern district of Texas to appear, plead, answer, or demur to said bill by a day certain to be designated in said order in case said defendants are not found and served in said district or do not voluntar-y appear hereto; and, as in duty bound, your orators will ever pray.

(Signed) MABRY & CARTER,
WELLBORN, LEAKE & HENRY,
Solicitors for Complainants.

Endorsed: # 22. Circuit court. Chancery. Ira Underwood and others *vs.* H. J. Dugan and others. Filed June 13, 1881. A. J. Houston, clerk.

25 EXHIBIT No. 1.

No. 127.

This is to certify that Fines Y. Roberson has appeared before the board of land commissioners for the county of Houston and proved, according to law, that he arrived in this Republic Jan'y —, eighteen and thirty-five, and that he is a married man and entitled to one league and labor of land upon the conditions of paying at the rate of three dollars and fifty cents for each labor of irrigable land, two dollars and fifty cents for each labor of temporal or arable land, and one dollar and twenty cents for each labor of pasture land which may be contained in the — secured to him by this certificate.

Given under our hands the 1st day of March, 1838.

E. GASSETT, *President*,
JOHN WORTHAM,
Ass. Com'rs.

Attest: SAM'L G. WELLS, *Clerk.*

Endorsements: Surveyed 21 labors sq. vs. of land by virtue of the within certificate this 10th August, 1842. Wm. C. Caruthers, dep'ty.

* * * * * * *

For value received, I assign & convey unto Warner L. Underwood the within certificate, as by deed also of this date. March 5th, 1838.

FINES Y. ROBERSON.

OSCAR ENGLEDOW.
H. B. DANCE.

GENERAL LAND OFFICE, AUSTIN, *June 1st*, 1881.

I, W. C. Walsh, com'r of the gen'l land office of the State
26 of Texas, hereby certify that the foregoing is a true and correct copy of the certificate, with as correct a copy of the endorsements as near as can be deciphered, from the originals now on file in this office.

In testimony whereof I hereunto set my hand and affix
SEAL. the impress of the seal of said office the date last above written.

(Signed) W. C. WALSH,
Commissioner.

Endorsed: Certified copy certificate. Fines Y. Roberson. No. 22. Chancery. Filed June 13, 1881. A. J. Houston, clerk.

* * * * * * *

EXHIBIT No. 2.

THE STATE OF TEXAS, }
County of Grayson. }

I, Solomon Bostick, clerk of the county court of said county, State of Texas, hereby certify that the head-right certificate of Finess Robertson for one league and labor of land issued to him by the board of land commissioners for Houston county, State of Texas, on the — day of —— and of the first class, No. 127, has been recommended by the traveling board appointed by an act of Congress passed January, 1840, as a genuine claim against the Government, these facts appearing from the abstract of land titles now in my office.

27 Given under my hand and seal of office this the 2d day of November, A. D. 1853.

[SEAL.] (Signed) S. BOSTICK, *Clerk.*

Endorsed: Certificate of the Co. clerk, Grayson Co., as to the genuineness of the Phineas Robertson certificate. Filed June 13, 1881. A. J. Houston, clerk.

EXHIBIT No. 3.

REPUBLIC OF TEXAS, }
County of Nacogdoches. }

This indenture, made and entered into this fifth day of March, eighteen hundred and thirty-eight, between Phineas Robertson, of the one part, and Warner L. Underwood, of the — part, witnesseth:

That the s'd Robertson hath, for and in consideration of five thousand dollars in hand paid, the receipt of which he acknowledges, bargained and sold, and by these presents doth bargain, sell, alien, and convey, unto the said Underwood one certain land certificate from the land commissioners in and for the county of Houston (the residence of said Robertson), number 127, and dated the 1st March, 1838, for one league & labor of land, together with all rights, interest, and benefits in anywise pertain-g to the ownership of said certificate, as well as, also, all lands and tenaments resulting from the same, reserving one-half of the league covered by s'd certificate for the use and benefit of Joshua Robbins, to whom the same
28 has by the s'd Robertson been heretofore sold; and the s'd Robertson doth specially sell, guarantee, and grant to the s'd Underwood, severally (2) and alone, the labor called for in s'd certificate; to have and to hold the aforesaid land certificate and rights to the s'd Underwood, his heirs and assigns forever; and the s'd Robertson doth hereby authorize the commissioner general of the land office to — the said Underwood, and in his own name, the pattent for the said land; but should it not be lawful for him so to do, then and in that case the said Robeson hereby binds himself to make the s'd Underwood any further title which may — lawful and necessary; and he doth hereby warrant the genuineness and legality of the s'd certificate (3) and all rights and benefits thereunto incident to the said Underwood, his heirs and assigns, free from the claims of all persons whatever.

In testimony whereof he, the s'd Robertson, hath hereunto set his hand — seal this date above.

PHINESS Y. ROBINSON. [SEAL.]

Witness:
GEO. ALLEN.
OSCAR ENGLEDOVE.
H. B. DANCE.

REPUBLIC OF TEXAS,
County of Nacogdoches.

Personally appeared before me, Chas. S. Taylor, chief justice of said county and *ex of.* notary public, H. B. Dance, one of the above-signed witnesses, who acknowledged his signature as such, and, being duly sworn, saith that Phiness Y. Robinson either
29 signed or acknowledged the foregoing instrument to be his act and deed.

Witness my hand and seal of office this 16th day of March, 1838.

CHAS. S. TAYLOR,
C. J. of the County & ex Of. N. P.

The original of the foregoing instrument was presented and duly recorded this 15th June, 1838.

W. D. THOMPSON,
Co. Recorder.

THE STATE OF TEXAS, }
County of Milam. }

I, Stroud Melton, clerk of the county court of said county and State aforesaid, do hereby certify that the above is a true copy of the original transfer and authentication and of the record of said transfer now on file in my office.

Witness my hand and the seal of said court, hereto
SEAL. affixed, at office, in the town of Cameron, this the 12th day of November, A. D. 1855.

STROUD MELTON,
Clerk C. C. M. C.

GENERAL LAND OFFICE, AUSTIN, TEXAS, *June 2nd*, 1881.

I, W. C. Walsh, commissioner of the general land office of the State of Texas, hereby certify that the foregoing is a true and correct copy of the original now on file in this office.

In testimony whereof I hereunto set my hand and affix
SEAL. the impress of the seal of said office the date last above written.

(Signed) W. C. WALSH,
Commissioner.

30 Endorsed: Certified copy of transfer, &c., from Phiness Robinson to Warner L. Underwood. No. 22. Circuit, in chancery. Filed June 13, 1881. A. J. Houston, clerk.

* * * * * * *

EXHIBIT No. 4.

No. 127.

This is to certify that Fineas Roberson has appeared before the board of land commissioners for the county of Houston and proved, according to law, that *that* he arrived in this Republic Jan., eighteen and thirty-five, and that he is a married man and entitled to one league and labor of land upon the condition of paying at the rate of three dollars and fifty cents for each labor of irrigable land, two dollars and fifty cents for each labor of temporal or arable land, and one dollar and twenty cents for each labor of pasture land which may be contained in the survey secured to him by this certificate.

Given under our hands this 1st day of March, 1838.

E. GASSETT, *President*,
JOHN WORTHANE,
Ass't Com'rs.

Atteste: SAMUEL G. WELLS.

Endorsement: For value rec'd I assign and convey unto Warner L. Underwood the within certificate, as per deed also of the date March 5th, 1838. Phinass Y. Robinson. Teste: Geo. Allen, Oscar Engledow, H. B. Dance.

31 REPUBLIC OF TEXAS,
County of Nacogdoches.

This indenture, made and entered into this 5th day of March, eighteen hundred and thirty-eight, between Phineas Robertson, of the one part, and Warner L. Underwood, of the other part, witnesseth: That the s'd Robertson hath, for and in consideration of five thousand dollars in hand paid, the receipt of which he acknowledges, bargained and sold, and by these presents doth bargain, sell, alien, and convey, unto the said Underwood one certain land certificate from the land commissioners in and for the county of Houston (the residence of said Robertson), number 127, and dated the 1st March, 1838, for one league and labor of land, together with all rights, interest, and benefits in anywise pertaining to the ownership of s'd certificate, as well also as all lands and tenements resulting from the same, reserving one-half of the league covered by said certificate for the use and benefit of Joshua Robbins, to whom the same has by s'd Robertson been heretofore sold, and the — Robertson doth specially sell, guarantee, and grant to the s'd Underwood severally (2) and alone the labor called for in s'd certificate; to have and to hold the aforesaid land certificate & rights to the s'd Underwood, his heirs and assigns forever; and the said Robertson doth hereby authorize the commissioner general of the land office to issue to the said Underwood & in his own name the patent for the said land, but should it not be lawful for him so to do, then and in that case the
32 said Robertson hereby binds himself to make to said Underwood any further title which may be lawful and necessary, and he doth hereby warrant the genuineness and legality of the s'd certificate (3) and all rights and benefits thereunto incident to the said Underwood, his heirs and assigns, free from the claims of all persons whatsoever.

In testimony whereof he, the s'd Robertson, hath hereunto set his hand and seal this date above.

PHINESS Y. ROBINSON. [SEAL.]

Witness:

GEO. ALLEN.
OSCAR ENGLEDOW.
H. B. DANCE.

REPUBLIC OF TEXAS,
County of Nacogdoches.

Personally appeared before me, Chas. S. Taylor, chief justice of said county and *ex o'f'o* notary public, H. B. Dance, one of the above-signed witness-, who acknowledged his signature as such, and, being duly sworn, saith that Phiness Y. Robinson either signed or acknowledged the foregoing instrument to be his act and deed.

Witness my hand and seal of office this 16th day of March, 1838.

CHAS. S. TAYLOR,
C. J. of the County & ex Of. N. P.

The original of the foregoing instrument was presented and duly recorded this 15th June, 1838.

W. D. THOMPSON,
Co. Recorder.

THE STATE OF TEXAS, }
County of Milam. }

I, Stroud Melton, clerk of the county court of said county
33 and State aforesaid, do hereby certify that the above is a true copy of the original transfer and authentication and of the record of said transfer now on file in my office.

Witness my hand and the seal of said court, hereto affixed at office, in the town of Cameron, this the 12th day of November, A. D. 1855.

STROUD MELTON,
Clerk C. C., M. C.

GENERAL LAND OFFICE, AUSTIN, *December 12th*, 1870.

I, Jacob Kuechler, commissioner of the general land office of the State of Texas, do hereby *do hereby* certify that the foregoing is a true and correct copy of land certificate No. 127, issued by the board of land commissioners of Houston county to Fineas Roberson for one league and labor, together with transfer endorsed upon the back thereof from Phiness Y. Robinson to Warner L. Underwood, together with an authentication of the same by H. B. Dance, an attesting witness, before Chas. S. Taylor, C. J. of the county & *ex off.* notary public, Nacogdoches county, from the original documents now on file in this office.

SEAL. In testimony whereof I have hereunto set my hand and affixed the seal of said office this 12th day of December, 1870.

JACOB KUECHLER,
Commissioner.

34 REPUBLIC OF TEXAS, }
County of Houston. }

Know all men by these presents that I, Phiness Robinson, for and in consideration of the sum of two hundred and eleven dollars to me in hand paid, the receipt whereof is hereby acknowledged, have sold, aliened, released, and conveyed, and by these presents do sell, alien, and convey, unto Joshua Robbins, his heirs and assigns, a certain tract of land lying and situate in Robinson colony, beginning (here comes in a set of field-notes, which I think it is not necessary to copy); and I declare that I have not hitherto sold, aliened or mortgaged the above-described premises; that they are free from all incumbrances whatsoever, and as such I sell the same to Joshua Robbins, together with all and several the privileges — appurtenances thereunto belonging, for the consideration aforesaid, and from this day forward forever I dispossess myself, my heirs and assigns, relinquish the dominion, title, and possession to said tract of land, which I have acquired in virtue of the before-mentioned titles, in favor of the said purchaser, and yield, renounce, and transfer the same to Joshua Robbins that he may possess, enjoy, and dis-

pose of the same at pleasure the same as of any other thing acquired under a just or legal title, or who for him or them rights or privileges may hold or legally represent, and I bind myself to prove and make good this sale and title, and to the observance of all the
35 above I bind my person and obligate my property, present and future, and submit myself to the jurisdiction of the tribunals which may be competent to hold or take cognizance of this business in order that they may compel me to perform the same under all the rigor of the law, and I renounce all laws which might favor me to set aside the validity of this instrument contrary to the true intent and meaning thereof.

In testimony whereof I have hereunto set my hand this the 19th day of November, 1837. The above is my head-right which I emigrated to Texas under.

PHINESS ROBINSON.

Witness:

JOHN H. KIRCHOFFER.
JOSIPH RICE.
W. W. his x mark. BALLARD.

STATE OF TEXAS, }
Houston County. }

Before me, the undersigned, this day personally appeared John H. Kirchoffer, to me well known, who, being duly sworn, says he was present and saw Phiness Robinson sign and deliver the foregoing instrument of writing to Joshua Robbins for all the purposes and considerations therein contained and expressed, and that he signed the same as a witness at the request of said Robinson.

SEAL. Witness my hand and seal of office, at Crockett, this 7th day of July, 1853.

J. H. GILLESPIE,
Clerk Co. C't, H. Co.

Recorded in Montague 22nd June, 1870; recorded again
36 after the burning of the court-house, 16th August, 1875. Patented to S. W. March, assignee of Phinesse Robertson, the 8th day of August, 1855, vol. 12, No. 228.

E. M. PEASE, *Gov'r.*
ROB'T M. ELGIN,
Chief Cl'k Gen'l Land Office.

Endorsed: Copies of certificate and transfers to Joshua Robbins, & with reference to the patent. No. 22. Circuit, chancery. Filed June 13, 1881. A. J. Houston, clerk.

* * * * * * *

EXHIBIT No. 5.

REPUBLIC OF TEXAS, }
County of Houston. }

Know all men by these presents that I, Phiness Robinson, for and in consideration of the sum of two hundred and eleven dollars to me in hand —, the receipt whereof is hereby acknowledged, have sold, aliened, released, and conveyed, and by these presents do sell, alien, and convey, unto Joshua Robbins, his heirs and assigns, a certain tract of land lying and situate in Robinson's colony, beginning at the southeast corner of James Fisher's, at the N. E. corner of Henry Reed's, at the head-waters of Walnut creek, thence north 60° east 5,000 varas to a stake, from which a post oak 12 inches in diameter bears N. 64° W. 9 varas distant and a post oak 22 inches in diameter bears south 22° east 12 varas distant; thence north 30° west 1,300 varas, crossed Walnut creek 5,000 varas, to a stake; thence south 60° west 5,000 varas to the northeast corner of Fisher's; thence south 30° east
37 5,000 —, with the line of said Fisher, to the place of beginning; crossed Walnut creek at 3,300 varas; and I declare that I have not hitherto sold, aliened, or mortgaged the above-described premises; that they are free from all incumbrances whatsoever, and as such I sell the same to Joshua Robbins, together with all and several the privileges — appurtenances thereunto belonging, for the consideration aforesaid, and from this day forward forever I dispossess myself, my heirs and assigns, relinquish the dominion, title, and possession to the said tract of land, which I have acquired in virtue of the before-mentioned titles, in favor of the said purchaser, and yield and renounce and transfer the same to Joshua Robbins that he may possess, enjoy, and dispose of the same at pleasure the same as of any other thing acquired under a just and legal title, or who for him or them rights or privileges may hold or legally represent, and I bind myself to prove and make good this sale and title, and to *make* the observance of all the above I bind my person and obligate my property, present and future, and submit myself to the jurisdiction of the tribunals which may be competent to hold or take cognizance of this business in order that they may compel me to perform the same under all the rigor of the law, and I renounce all laws which might favor me or which would by any means enable me to set aside the validity of this instrument contrary to the true intent and meaning thereof.

38 In testimony whereof I have hereunto set my hand this the 19th day of November, 1837. The above is my head-right which I emigrated to Texas under.

(Signed) PHINESS ROBINSON.

Witnesses:
JOHN H. KIRCHHOFFER.
JOSEPH RICE.
his
W. W. x BALLARD.
mark.

STATE OF TEXAS, }
Houston County. }

Before me, the undersigned, this day personally appeared John H. Kirchhoffer, to me well known, who, being duly sworn, says he was present and saw Phiness Robinson sign and deliver the foregoing instrument of writing to Joshua Robbins for the purposes and considerations therein contained and expressed, and that he signed the same as a witness at the request of said Robinson.

SEAL. Witness my hand and seal of office, at Crockett, this 7th July, 1853.

(Signed) J. H. GILLESPIE,
Cl'k Co. C't, H. Co.

STATE OF TEXAS, }
County of Montague. }

I, W. A. Morris, clerk district court, Montague county, do certify that the above and attached transfer was this day duly recorded in my office in Book D, page 181 & 188, record deed transfers, &c.

SEAL. In witness whereof I hereunto set my hand and the seal of office, hereon impressed at office, in the town of Montague, on this the 22d day of June, A. D. 1870.

39 (Signed) W. A. MORRIS,
Clerk D. C., M. C.

THE STATE OF TEXAS, }
County of Montague. }

I, W. A. Williams, clerk of the district court of said county, hereby certify that the annexed and foregoing transfer was refiled for record in my office August 16th, 1875, at 8 o'clock a. m., & re-recorded the same day in Book C, page 613, record of deeds, &c., of Montague county.

SEAL. To certify which I hereto set my hand & seal of office Aug. 16th, 1875.

W. A. WILLIAMS,
Dist. Clerk.

Endorsed: Phiness Robinson. Transfer to Joshua Robbins. Filed for record August 16th, 1875, at 8 o'clock a. m. W. A. Williams, dist. clerk. Filed March 23d, 1876. W. A. Williams, dist. clerk. No. 22. Chancery. Filed June 13, 1881. A. J. Houston, clerk.

* * * * * * *

EXHIBIT No. 6.

STATE OF TEXAS, }
County of Madison. }

Know all men by these presents that we, James B. Durham and Nancy Durham, his wife; James Allen & his wife, Lucinda E. Allen; James Webb and his wife, Mary M. Webb, and George Robbins and Allen Robbins, all heirs-at-law and legal representatives of Joshua

Robbins, deceased, have this day, and do by these presents,
40 for and in consideration of the sum of one thousand dollars to us in hand paid by William H. Cundiff, of the county of Houston and State of Texas, the receipt whereof is by these presents fully acknowledged, *have* granted, bargained, sold, and conveyed unto said W. H. Cundiff, his heirs and assigns forever, one equal undivided half of a certain league and labor of land situated in Montague county, Texas, and the same located by virtue of the head-right certificate issued by the board of land commissioners of Houston county, Texas, and No. 127. Said land fronts on Red river, and the patent to said land is hereby made a part of this transfer to fully identify the land and interest hereby transferred, and said certificate and the land located, surveyed, and patented by virtue of the same was sold and conveyed by Phiness or Finess Robertson to Joshua Robins as his head-right certificate issued him as an emigrant to the Republic, which said deed is now of record in Montague county. All papers, transfers, &c., are hereby made part and parcel of this transfer to fully identify the land and certificate hereby transfer-ed; to have and to hold said land certificate or interest to said William H. Cundiff, his heirs and assigns forever; and we will forever warrant and defend the title to the same from ourselves or heirs, &c., and no further.

41 In testimony of which we do hereto sign our names this 21st day of November, A. D. 1870.

(Signed) J. B. DURHAM.
her
NANCY x DURHAM.
mark.
JAS. W. ALLEN.
L. E. ALLEN.
J. H. WEBB.
M. M. WEBB.
G. S. ROBBINS.
A. M. ROBBINS,
By his attorney, G. S. ROBBINS.

STATE OF TEXAS,
County of Madison.

Personally came and appeared before me, the undersigned authority, James B. Durham and his wife, Nancy Durham; James W. Allen and his wife, L. E. Allen; James H. Webb and his wife, M. M. Webb; Geo. S. Robbins, and A. M. Robbins, by his attorney, G. S. Robbins, all to me well known, who acknowledged to me that they had signed and delivered the foregoing deed or transfer to W. H. Cundiff for all the uses, purposes, and considerations therein contained, set forth, and expressed; and the said Nancy Durham, wife of J. B. Durham; L. E. Allen, wife of James Allen, and M. M. Webb, wife of James Webb, being by me examined seperately and apart and privily from their said husbands, acknowledged to me that they had signed the same, after having the same read and fully explained to them, for all the uses, purposes, and considerations

therein contained and expressed, as their voluntary act and deed, without any fears or threats from their said husbands, and they do not wish to retract the same or any part thereof; and the said Nancy Durham signed her name by making her mark.

42 Given under my hand and official seal, at Madisonville, this 22nd day of November, A. D. 1870.

[SEAL.] (Signed) W. M. RIED,
Clk D. C., M. C.

Endorsed: Jas. B. Durham and others. Deed to W. H. Cundiff. Filed for record June 12th, 1880, at 2 o'clock p. m., and recorded the 12th day of June, 1880, at 3 o'clock p. m., in Book I, on page 366, record of deeds for Montague Co. Given under my hand & seal of office June 12th, 1880. (Seal.) (Signed) W. A. Williams. No. 22. Circuit, chancery. Filed June 13, 1881. A. J. Houston, clerk.

* * * * * * *

EXHIBIT No. 7.

THE STATE OF KENTUCKY, }
Warren County. }

Know all men by these presents that we, Lucy C. Underwood and Frances Grider, widow of B. C. Grider, formerly Frances Underwood, and Charles A. Nazro and Josie Nazro, formerly Josie Underwood, now the wife of said Chas. A. Nazro, and John Underwood and S. M. Poyntz and Mary Poyntz, his wife, formerly Mary Underwood, and the said S. M. Poyntz hereby joins his said wife herein, all of whom are of the said State of Kentucky, for and in consideration of the sum of ten dollars to us in hand paid by William H. Cundiff, the receipt whereof is hereby acknowledged, and the further consideration stated in a

43 deed of conveyance made for us by our agents and attorneys-in-fact, W. A. H. Miller and John Dowell, of the city of Austin, Texas, to said William H. Cundiff, bearing date the 20 day of March, A. D. 1877, under a power of att'y made by us to said Miller and Dowell, bearing date Aug. 22nd, A. D. 1873, have this day bargained, sold, aliened, and conveyed, and do by these presents bargain, sell, alien, and convey, unto the said William H. Cundiff, his heirs and assigns, all the right, title, interest, and claim which we and each of us have now or at any time ever had, held, or owned in and to the head-right certificate for one league and one labor of land issued by the board of land commissioners of Houston county, Texas, to Finesse Robinson on the 1st day of March, A. D. 1838, and numbered 127, and the land located by virtue thereof in the county of Montague, in the State of Texas, bounded and described as follows: Beginning at a stake in the bank of Red River, on the north boundary of said county of Montague, at Thomas Scott's N. W. corner, from which a bur oak bears N. 39° W. 20 varas, an elm bears N. 49° E. 30 varas; thence south 4,018 varas,

Scott's S. W. corner; 9,672 varas to a corner; thence west 2,550 varas to corner; thence north 10,720 varas to a stake on the bank of Red River, from which a cottonwood bears S. 10° E. 80 varas; another bears N. 74° W. 14 varas; thence down the river, with its meanderings, to the place of beginning, together with all and singular
44 our rights and titles in and to said lands and premises, and all the incidents and hereditaments to the same in any manner belonging; to have and to hold the said land and premises unto the said William H. Cundiff, his heirs and assigns, in fee simple forever. The interest which we hereby convey is the one-half which was sold and transferred by said Robinson or Robertson to Warner L. Underwood on the 5th day of March, A. D. 1838, the deed from said Robinson or Robertson to said Warner L. Underwood being for the whole of certificate, but stating in the same that one-half of said league had been previously sold and transferred to Joshua Robbins. This deed of conveyance is not only made to transfer and convey to said Cundiff our said interest in said land and premises, but also to confirm, *no*tify, and validate a deed of conveyance made by W. A. H. Miller and John Dowell, our agents and attorneys-in-fact, on the 20th day of March, A. D. 1877, and also a deed of conveyance made by us on the 10th day of April, A. D. 1879, both to said W. H. Cundiff, which we hereby do to all intents and purposes to the extent of our entire interest in and to said land — premises.

This 12th day of May, 1880.

(Signed) LUCY C. UNDERWOOD.
FANNY U. GRIDER.
JOSIE N. NAZRO.
CHARLES A. NAZRO.
MARY U. POYNTZ.
S. M. POYNTZ.
JOHN UNDERWOOD.

45 STATE OF KENTUCKY, *Warren County,* } *sct:*

Personally appeared before me, George R. Gorin, a notary public in and for the county of Warren and State of Kentucky, Lucy C. Underwood, Fanny U. Grider, Josie N. Nazro, Charles A. Nazro, Mary U. Poyntz, and John Underwood, and each of them acknowledged that they and each of them signed, sealed, and delivered the annexed and foregoing deed and writing, bearing date on the twelfth day of May, A. D. 1880, for the purposes therein contained, to certify which I hereby sign the same the day and date above mentioned. At same time personally appeared before me Josie N. Nazro, formerly Josie Underwood and now the wife of Chas. A. Nazro, and Mary U. Poyntz, formerly Mary Underwood and now the wife of S. M. Poyntz, who, having been examined by me privily and apart from each other and having this writing fully explained to them, acknowledged the same to be their act and deed for the uses and purposes therein specified and decreed; that they willingly signed, sealed,

and delivered the same and did not wish to retract it, and consented that it be recorded; to certify which I hereby sign the same the day and date above written, being May 12th, 1880, at Bowling Green, Warren county, Kentucky.

SEAL. Given under my hand and official seal.

(Signed) GEORGE R. GORIN,

46 *Notary Public for Warren County, State of Kentucky.*

STATE OF KENTUCKY, *Mason County,* } ss:

I, W. W. Ball, clerk of the county court, a court of record in and for the county and State aforesaid, do certify that the foregoing deed from Lucy C. Underwood and others to Wm. H. Cundiff was this day produced to me in my office and acknowledged by S. M. Poyntz, a party thereto, to be his act and deed for the uses and purposes therein mentioned.

Witness my hand and the seal of said court this 21st day

L. S. of May, 1880.

(Signed) W. W. BALL,

Clerk Mason Covnty Court.

Endorsed: Lucy C. Underwood, &c., &c. Deed to Wm. H. Cundiff. Filed for record June 12th, 1880, at 2 o'clock p. m., and recorded June 12, 1880, in Book I, on page 368, record of deeds, &c. of Montague county, Texas. Given under my hand and seal of office June 12, 1880. W. A. Williams, cl'k. Recorded June 12th, 1880, at 4 o'clock p. m., in Book I, on page 368, record of deeds for Montague county, Texas. To all of which I certify under my hand and seal of office June 12th, 1880. (Seal.) (Signed) W. A. Williams,

47 cl'k. No. 22. Circuit, chancery. Filed June 13, 1881. A. J. Houston, clerk.

* * * * * * *

EXHIBIT NO. 8.

THE STATE OF CALIFORNIA, *County of Santa Cruz.* }

Know all men by these presents that we, F. J. McCann and Lucy U. McCann, wife of said F. J. McCann, of the county and State *State* aforesaid, in consideration of the sum of ten dollars to us paid by W. H. Cundiff, of the county of Houston, in the State of Texas, and in the further consideration that our duly appointed agents and attorneys-in-fact, to wit, John Dowell and W. A. H. Miller, of Austin, Travis county, Texas, did, on the 20th day of March, A. D. 1877, by virtue of our certain power of attorney to them there-fore duly made by us, make, execute, and deliver to said W. H. Cundiff our certain deed to land hereinafter described, and in further consideration that we, with others, did, on the 10th day of April, A. D. 1879, make, execute, and deliver to said W. H. Cundiff a deed of conveyance to said land, now we have granted, bargained, sold, conveyed, and re-

leased, and by these presents do grant, bargain, sell, ratify, confirm, convey, and release, unto the said W. H. Cundiff all of our interest, right, title, and claim in and to a certain league and labor of land situated, located, and being in Montague county, Texas, on Red River, located by virtue of certificate No. 127, issued by the board of land commissioners of Houston county, Texas, to Finesse
48 Robertson, dated March 1st, A. D. 1838, for one league and labor of land, beginning on the *the* bank of Red River, Thomas Scott's N. W. corner, from which a bur oak brs. N. 39° W. 20 vas., an elm brs. N. 44° 30 vas.; thence south 4,018 vas., Scott's S. W. corner; 9,672 vas. to a corner; thence west 2,550 vas. to a corner; thence north 10,720 vas., a stake on the bank of Red River, from which a cottonwood brs. S. 10° E. 80 vas., another brs. N. 74° W.; thence down the river, with its meanders, to the place of beginning, together with all and singular the rights, members, hereditaments, and appurtenances to the same belonging or in anywise incident or appertaining; to have and to hold all and singular the premises above mentioned unto the said W. H. Cundiff, his heirs and assigns forever, and we do hereby bind ourselves, our heirs, executors, and administrators, to warrant and forever defend all and singular the said premises unto the said W. H. Cundiff, his heirs and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof or under us.

Witness our hands this December the fifteenth, A. D. 1879.

(Signed) FERDINAND J. McCANN.
LUCY U. McCANN.

THE STATE OF CALIFORNIA, }
County of Santa Cruz. }

Before me, the undersigned authority, a notary public
49 in and for the State and county, duly commissioned and qualified, on this day personally appeared F. J. McCann, a man to me well known to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed, and at the same time and place on this day personally appeared Mrs. Lucy U. McCann, wife of said F. J. McCann, known to me to be the person whose name is subscribed to the foregoing instrument, and having been examined by me privily and apart from her husband, and having the same fully explained to her, she, said Lucy U. McCann, acknowledged such instrument to be her act and deed and declared that she had willingly signed the same for the purposes and considerations therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office this fifteenth day
L. S. of December, A. D. 1879.

(Signed) RICHARD THOMPSON,
Notary Public, Santa Cruz County, California.

STATE OF TEXAS,
County of Montague.

I, W. A. Williams, clerk of the county court in and for said county, do hereby certify that the foregoing instrument of writing was duly and correctly recorded in my office on the 14 day
50 of June, 1880, at 9 o'clock a. m., in Record Book I, page 374.
In testimony whereof I hereunto sign my name and affix
L. S. the seal of said court, at office in Montague, this 14 day — June, 1880.

(Signed) W. A. WILLIAMS,
Clerk of County Court, M. Co., Texas.

Filed for record June 12th, 1880, at 2 o'clock p. m.
W. A. WILLIAMS, *Clk.*

Endorsed: F. J. & L. U. McCann. Deed to W. H. Cundiff. No. 22. Circuit, chancery. Filed June 13, 1881. A. J. Houston, clerk.

* * * * * * *

EXHIBIT No. 9.

STATE OF MISSOURI,
County of Jackson.

Know all men by these presents that Juliette N. Western (widow of William W. Western), formerly Juliette Underwood, of the county of Warren and State of Kentucky, for and in consideration of the sum of ten ($10.00) dollars in hand paid by Wm. H. Cundiff, the receipt whereof is hereby acknowledged, and the further consideration stated in a deed of conveyance made for me by my agents and attorneys-in-fact, W. A. H. Miller and John Dowell, of the city of Austin, Texas, to said W. H. Cundiff, bearing date the 20th day of March, A. D. 1877, under a power of attorney made by myself and others to said Miller and Dowell, bearing date Aug. 22, A. D. 1873, have bargained, sold,
51 aliened, and conveyed, and do by these presents bargain, sell, alien, and convey, unto the said Wm. H. Cundiff, his heirs and assigns, all the right, title, interest, and claim which I now have or at any time ever had, held, or owned in and to the head-right certificate for one league and one labor of land issued by the board of land commissioners of Houston county, Texas, to Finesse Robinson on the 1st day of March, A. D. 1838, and numbered "127," and the land located by virtue thereof in the county of Montague, in the State of Texas, bounded and described as follows, viz: Beginning at a stake on the bank of Red River, on the north boundary of said county of Montague, at Thomas Scott's N. W. corner, from which a bur oak bears N. 39° W. 20 varas, an elm bears N. 44° E. 30 varas; thence south 4,018 varas, Scott's S. W. corner; 9,672 varas to corner; thence west 2,550 varas to corner; thence north 10,720 varas to a stake on the bank of the river, from which a cottonwood bears S. 10° E. 80 varas, another bears N. 74° W. 14 varas; thence down

the river, with its meanders, to the place of beginning, together with all and singular of my rights and title in and to said land and premises, and all the incidents and hereditaments to the same in any manner belonging; to have and to hold the said land and premises unto the said William H. Cundiff, his heirs and assigns,
52 in fee simple forever. The interest which I hereby convey is the one one-half which was sold and transferred by said Robinson or Robertson to Warner L. Underwood on the 5th day of March, A. D. 1838, the *and* from said Robinson or Robertson to said Warner L. Underwood being for the whole of certificate, but stating in the same that the half of said league had been previously sold and transferred to Joshua Robins. This deed of conveyance is not only made to transfer and convey to Cundiff my said interest in said land and premises, but also to confirm, ratify, and validate a deed of conveyance made by W. A. H. Miller and John Dowell, my agents and att'ys-in-fact, on the 20th day of March, A. D. 1877, and also a deed of conveyance made by me on the 10th day of April, A. D. 1879, both to said William H. Cundiff, which I hereby do to all intents and purposes to the extent of my entire interest in and to said land — premises.

Witness my hand this the 17 day of May, 1880.

(Signed) MRS. JULIETTE U. WESTERN.

STATE OF MISSOURI, }
County of Jackson, } ss:

Before me, W. J. Ward, a notary public within and for the county and State aforesaid, on this day personally appeared Juliette U. Western, known to me to be the person whose name is sub-
53 scribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed, and she further declares herself to be single and unmarried.

L. S. Given under my hand and seal of office this 17th day of May, A. D. 1880.

(Signed) W. J. WARD,
Notary Public.

My commission expiring July 20, 1881.

THE STATE OF TEXAS, }
County of Montague. }

This certifies that this deed and certificate of authentication was filed for record June 12, 1880, at 2 o'cl'k p. m., and recorded June 14, 1880, at 8 o'clock a. m., in Book I, on page 371, record of deeds for Montague county.

L. S. Given under my hand and seal of office June 14, 1880.

(Signed) W. A. WILLIAMS,
Clk C. C., M. Co., Texas.

Endorsed: Deed. Juliette N. Western to Wm. H. Cundiff. Filed for record June 12, 1880, at 2 o'clock p. m. W. A. Williams, cl'k. No. 22. Circuit, chancery. Filed June 13, 1881. A. J. Houston, clerk.

* * * * * * *

EXHIBIT No. 10.

THE STATE OF NEW YORK, }
County of New York. }

Know all men by these presents that I, Henry L. Underwood, of the State of New York, county of New York (formerly
54 of Bowling Green, Warren county, Kentucky), for and in consideration of the sum of ten ($10.00) dollars to me in hand paid by Wm. H. Cundiff, the receipt whereof is hereby acknowledged, and the further consideration stated in a deed of conveyance made for me by my agents and attorneys-in-fact, W. A. H. Miller and John Dowell, of the city of Austin, Texas, to said Wm. H. Cundiff, bearing date the 20th day of March, A. D. 1877, under a power of att'y made by me to said Miller and Dowell, bearing date August 22d, A. D. 1873, have bargained, sold, aliened, and conveyed, and do by these presents bargain, sell, alien, and convey, unto the said William H. Cundiff, his heirs and assigns, all the right, title, interest, and claim which I have now or at any time ever had, held, or owned in and to the head-right certificate for one league and one labor of land issued by the board of commissioners of Houston county, Texas, to Finesse Robinson on the 1st day of March, A. D. 1838, and numbered "127," and the land located by virtue thereof in the county of Montague, in the State of Texas, bounded and described as follows, viz: Beginning at a stake on the bank of Red River, on the north boundary of said county of Montague, at Thomas Scott's N. W. corner, from which a bur oak bears N. 39° W. 20 varas, an elm bears N. 44° E. 30 varas, thence south 4,018 varas, Scott's S. W. corner; 9,672 varas to corner; thence west 2,550 varas to corner; thence north 10,720 varas to a stake on the bank of the
55 river, from which a cottonwood bears S. 10° E. 80 varas; another bears N. 74° W. 14 varas; thence down the river, with its meanders, to the place of beginning, together with all and singular of my rights and titles in and to said land and premises and all the incidents and hereditaments to the same in any manner belonging; to have and to hold the said land and premises unto the said Wm. H. Cundiff, his heirs and assigns, in fee simple forever. The interest which I hereby convey is the one-half which was sold and transferred by said Robinson or Robertson to Warren L. Underwood on the 5th day of March, 1838, the deed from said Robinson or Robertson to said Warner L. Underwood being for the whole of certificate, but stating in the same that the half of said league had been previously sold and transferred to Joshua Robins. This deed of conveyance is not only made to transfer and convey to said Cundiff my said interest in said land and premises, but also to confirm, ratify, and validate a deed of conveyance made by W. A. H. Miller

and John Dowell, my agents and atty's-in-fact, on the 20th day of March, 1877, and also a deed of conveyance made by me on the 10th day of April, A. D. 1879, both to said Wm. H. Cundiff, which I hereby do to all intents and purposes to the extent of my entire interest in and to said land and premises.

Witness my hand this 4th day of June, 1880.

(Signed) HENRY L. UNDERWOOD.

56 STATE OF NEW YORK, } ss:
City and County of New York, }

Personally appeared before me, P. L. Van Der Veer, a notary public in and for the county of New York and State of New York, Henry L. Underwood, who acknowledged that he signed, sealed, and delivered the annexed and foregoing deed and writing, bearing date the 4th day of June, 1880, for the purposes therein mentioned, and that said Henry L. Underwood is known to me to be the same person whose name is signed to said deed. To certify which I hereby sign the same under my notarial seal this the day and date above written, being the 4th day of June, 1880.

Given under my hand and official seal.

[L. S.] P. L. VAN DER VEER,
Notary Public for New York County, New York State.

Endorsed: Deed. H. L. Underwood to W. H. Cundiff. No. 22. Circuit, chancery. Filed June 22, 1881. A. J. Houston, clerk.

* * * * * * *

EXHIBIT No. 11.

STATE OF TEXAS, }
Travis County. }

Know all men by these presents that whereas we, L. C. Underwood (widow of Warner L. Underwood) and Warner Underwood, John C. Underwood, Henry L. Underwood, John C. Underwood, Mary W. Underwood, Fanny U. Grider, Juliette U. Western, Jose N. Nazro, and Lucy U. McCann (children of Warner L. Under-
57 wood, dec'd), *we* as said widow and children of Warner L. Underwood, own an undivided one-half of the league and labor of land situated on Red River, in Montague county, Texas, in what is known as Spanish Fort Bend, located by virtue of land certificate No. 127, issued in Houston county, Texas, to Finesse Robinson, the one-half being the same deeded to Warner L. Underwood by Finesse Robinson on the 5 day of March, 1838; and whereas there are adverse claimants to said land; and whereas Wm. H. Cundiff, agent and attorney for one of the adverse claimants to said land, has this day paid to W. A. H. Miller and John Dowell, our agents and attorneys, fifteen hundred dollars, the receipt of which is acknowledged hereby in full compromise for our half interest in and to said Robinson league and labor of land: *and* we hereby grant, bargain, sell, and deliver unto the said Wm. H. Cundiff all our interest (being

an undivided half) of the league and labor of land above described, together with all and singular the rights, privileges, and appurtenances to the same belonging or in anywise incident or appertaining thereto; to have and to hold all and singular the above-described premises unto the said Wm. H. Cundiff, his heirs and assigns forever; and we hereby bind ourselves, our heirs and assigns, to warrant and forever defend the title to the above-described premises unto the said Wm. H. Cundiff, his heirs and assigns, against
58 the claims of all persons legally claiming or to claim the same or any part thereof by, under, or through us, but no further.

Witness our hands and scrolls for seals, at Austin, this 20th day of March, 1877.

(Signed)

L. C. UNDERWOOD. [L. S.]
WARNER UNDERWOOD. [L. S.]
MARY W. UNDERWOOD. [L. S.]
HENRY L. UNDERWOOD. [L. S.]
JOHN C. UNDERWOOD. [L. S.]
FANNY U. GRIDER. [L. S.]
JULIETTE U. WESTERN. [L. S.]
JOSE N. NAZRO. [L. S.]
LUCY U. McCANN. [L. S.]

Attest: M. B. HIGHSMITH.
T. L. WREN.

All of above signed by—
W. A. H. MILLER AND
JOHN DOWELL,
Agents and Attorneys-in-Fact.

STATE OF TEXAS, }
County of Travis. }

Before me, James Neill, a justice of the peace for said county, duly commissioned and qualified, this day personally appeared L. C. Underwood, Warner Underwood, Mary W. Underwood, Henry L. Underwood, John C. Underwood, Fanny U. Grider, Juliette U. Western, Jose U. Nazro, and Lucy U. McCann, by their att'ys-in-fact, John Dowell and W. A. H. Miller, to me well known, who acknowledged that they executed the foregoing instrument of writing and declared the same to be their act and deed for the uses. purposes, and consideration therein expressed.

To certify which I hereto affix my hand and official seal,
L. S. in the city of Austin, 21st day of March, 1877.

JAMES NEILL,
Justice of the Peace and ex Officio Notary Public,
59 *Travis County, Texas.*

Endorsed: Deed. Mrs. L. C. Underwood and others, by Miller & Dowell, to W. H. Cundiff. Filed for record June 12th, 1880, at 2 o'clock p. m. and recorded June 14, 1880, at 10 o'clock a. m., in

Book I, on page 376, record of deeds, &c., of Montague. Given under my hand and seal this June 14th, 1880. (Seal.) (Signed) W. A. Williams, cl'k. # 22. Circuit, chancery. Filed June 13, 1881. A. J. Houston, clerk.

* * * * * * *

EXHIBIT No. 12.

STATE OF KENTUCKY, }
County of Warren. }

This memoranda of agreement, this day made and entered into by and between L. C. Underwood, Warner, Henry, John C., and Mary Underwood, F. U. Grider, Juliette B. Western, Lucy U. McCann, and Josie U. Nazro, of the county of Warren and State of Kentucky, of the 1st part, and W. A. H. Miller and John Dowell, att'ys-at-law under the firm name of Miller & Dowell, of the city of Austin, county of Travis and State of Texas, of the 2d part, witnesseth:

That *were* as the said parties of the 1st part, as heirs-at-law of W. L. Underwood, deceased, intend to bring suit for one-half of a league and labor of land situated on Red River, in Montague county, Texas, in what is known as Spanish Bend, located by virtue of land certificate No. 127, issued in Houston county, Texas, to Finesse
60 Robinson about 1838, a one-half portion as aforesaid deeded to said W. L. Underwood, deceased, by said Robinson, and for which purpose said party of the 1st part has retained those of the 2d part as att'ys-at-law to bring said suit, with this agreement, that the said party of the 2d part is to bring said suit in the name of the said party of the 1st part and give the same their attention and services as att'ys-at-law and to pay all costs of the suit and all other necessary and incident- expenses, and to turn said land so recorded over to the said parties of the 1st part in their own right and possession, and upon which the said party of the 1st part binds and covenants to make unto the parties of the 2d part good and sufficient title to one-half of all of said land so recovered by them for said party of the 1st part out of said league and labor as aforesaid and, further, said parties of the second part are authorized to compromise with the adverse claimants to said land, and sign each and all of our names to any instrument of writing necessary thereto if they believe our interest can be better effected by this means than through a suit.

In testimony whereof witness our hands, using scrolls for seals, this the 22d day of August, A. D. 1873.

(Signed)

L. C. UNDERWOOD. [L. S.]
WARNER UNDERWOOD. [L. S.]
FANNY U. GRIDER. [L. S.]
JULIETTE U. WESTERN. [L. S.]
JOHN C. UNDERWOOD. [L. S.]
61 JOSIE U. NAZRO. [L. S.]
MARY U. UNDERWOOD. [L. S.]
HENRY L. UNDERWOOD. [L. S.]
LUCY U. McCANN. [L. S.]
MILLER & DOWELL. [L. S.]

BOWLING GREEN, }
Warren Co., Kentucky. }

This day came L. C. Underwood, Fanny U. Greder, Juliette B. Western, John C. Underwood, Josie U. Nazro, Mary U. Underwood and acknowledged the execution of the foregoing letter of attorney.

Given under my hand and seal this 22d day of August, 1873.

L. S.

(Signed) WARNER UNDERWOOD,
Notary Public, W. Co., Ky.

NEW YORK CITY, NEW YORK CO., }
State of N. Y., } *ss:*

This day came Henry L. Underwood and acknowledged the execution of the foregoing letter of attorney.

Given under my hand & seal this 25 day of August, 1873.

L. S.

(Signed) REULL H. PAGE,
Notary Public.

STATE OF CALIFORNIA, }
County of Santa Cruz, } *ss:*

On this fourth day of September, A. D. one thousand eight hundred and seventy-three, before me, Frank Cooper, a notary public in and for the county of Santa Cruz, California, personally appeared Lucy U. McCann, known to me to be the same person whose
62 name is subscribed to the annexed instrument, and she acknowledged to me that she executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in the town and county of Santa Cruz, the day and year in this certificate first above written.

L. S.

(Signed) FRANK COOPER,
Notary Public.

THE STATE OF TEXAS, }
County of Montague. }

I, W. A. Williams, clerk of the district court of Montague county, State of Texas, do hereby certify that the foregoing power of attorney, with its certificate of authentication, was filed in my office for record at 4 p. m. on the 20 day of March, A. D. 1874, and recorded at 4 p. m. on the 23 day of March, A. D. 1874, in Book P, page 477, &c., of Montague county record of deeds, &c.

Given under my hand and the seal of the district court of Montague county, in Montague, Texas, on this 23 day of March, A. D. 1874.

L. S.

(Signed) W. A. WILLIAMS,
Clerk District Court, M. C., Texas,
By J. R. COWDEN, *Deputy.*

Endorsed: Power att'y, Mrs. L. C. Underwood to Miller & Dowell. Filed March 20th, 1874, at 4 p. m. W. A. Williams, dist. clerk.

Recorded on the 23d day of March, A. D. 1874, at 4 p. m., on
63 Book B, page 477. W. A. Williams, dist. clerk. No. 22. Circuit, chancery. Filed June 13, 1881. A. J. Houston, clerk.

* * * * * * *

EXHIBIT No. 13.

THE STATE OF TEXAS, }
County of Tarrant. }

Know all men by these presents that I, William H. Cundiff, of the county of Houston and State aforesaid, in consideration of the sum of six thousand ($6,000) dollars to me paid by James H. Cundiff, of the county of Buchanan and State of Missouri, the receipt of which is hereby acknowledged, have granted, bargained, sold, conveyed, and released, and by these presents do grant, bargain, sell, convey, and release, unto the said James H. Cundiff, his heirs and assigns, the following-described property, to wit: One league and one labor of land in Montague county, Texas, located by virtue of headright certificate No. 127, issued by the board of land commissioners of Houston county, Texas, on the 1st day of March, A. D. 1838, to Finesse Robertson for one league & labor of land, said land being located and situated on Red River, in what is known as Spanish Fort Bend, beginning on the bank of Red River, at Thomas Scott's N. W. corner, from which a burr oak brs. N. 39° W. 20 vrs., an elm brs. N. 44° E. 30 vrs., thence south 4,018 vrs., Scott's S. W. corner; 9,672 vrs. to a corner; thence west 2,550 vrs. to a corner; thence north 10,720 vrs. to a stake on the bank of Red River, from
64 which a cottonwood brs. S. 10° E. 80 vrs., another brs. N. 74° W. 14 vrs.; thence down said Red River, with its meanders, to the place of beginning, together with all and singular the rights, members, improvements, hereditaments, and appurtenances to the same belonging or in anywise incident or appertaining; to have and to hold all and singular the premises above mentioned unto the said James H. Cundiff, his heirs and assigns forever; and I do hereby bind myself, heirs, executors, and administrators to warrant and forever defend all and singular the said premises unto the said James H. Cundiff, his heirs and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness my hand, at Ft. Worth, on this 26th day of August, A. D. 1879.

(Signed) WM. H. CUNDIFF. [SEAL.]

THE STATE OF TEXAS, }
County of Tarrant. }

Before me, W. E. Kneeland, a notary public in and for the county of Tarrant, personally appeared Wm. H. Cundiff, to me well known, party to the above instrument of writing, bearing date the 26th day of August, A. D. 1879, and acknowledged that he had signed, sealed, and delivered the same for the purposes and consideration therein stated.

In testimony whereof I hereunto sign my name and affix
L. S. the impress of my official seal, at my office, in Fort Worth, this 26th day of August, A. D. 1879.

(Signed) W. E. KNEELAND,
65 *Notary Public, Tarrant Co., Texas.*

THE STATE OF TEXAS, }
County of Montague. }

I, W. A. Williams, clerk of the county court of said county, do hereby — that the above instrument of writing, dated on the 26 day of August, 1880. with its certificate of authentication, was filed for record in my office this 12th day of June, A. D. 1880, at 2 o'clock p. m., and duly recorded the 14th day of June, A. D. 1880, at 2 o'clock p. m., in the records of said county, in vol. I, on pages No. 378.

Witness my hand and the seal of the county court of said
L. S. county, at office, in Montague, the day and year last above written.

(Signed) W. A. WILLIAMS,
Clerk C. C., M. Co.

Endorsed: Warranty deed. William H. Cundiff to James H. Cundiff. Filed for record June 12, 1880, at 2 o'clock p. m. Recorded June 14, 1880, in Montague County Record of Deeds, Book I, page 378. (Signed) W. A. Williams, clerk. #22. Circuit, chancery. Filed June 13, 1881. A. J. Houston, clerk.

* * * * * * *

66 EXHIBIT No. 14.

CAMERON, MILAM COUNTY, TEXAS, *May 15th*, 1860.

Mr. W. L. Underwood.

D'R SIR: I must apologize for neglecting to write to you sooner. Last winter I got a friend at Austin to hunt up the certificate of P. Y. Robertson. He found it in the land office. I believe I wrote you that it had yellow paper pasted on the back. My friend, agreeable to my instructions, got the commissioner to take the yellow paper off of the back of the certificate, it having no appearance of be- injured from use, so as to cause any paper to be paisted on it to hold it together. When the yellow was taken off there was a thin white paper paisted over it, but you could plainly see and read the transfer to you by Robertson. I got a certified copy of the cerf. & transfer to you; also of the deed to you, of record in this county, transferring half of the league & the labor; the other half of the league was sold to Robins. The land is located in Montague Co., on Red River, and I sent the transfers to that county and had them placed of record. The clerk of the court says it's fine land and no settler on it & the pattent not of record in that county nor no other deed to the land. The pattent is in the name of S. W. March. I put the case in the hand- of a lawyer and instructed him to put a tenant on it & sue March by publication, as his residence is not

known, to take the cloud off of your land, which he agreed to do. The lawyer is our old friend, Rice Moxey & Son. He agreed to attend to it promptly, and I think he will. I think the chance pretty good to get the land. I will give him a round — for it. It's
67 a clear case of fraud as ever was. He, March, had a transfer from P. Y. Robertson; no doubt a forgery. I have no news of interest. Our crops are fine; some corn in roasting ears. We, I fear, are near a crissis that will shake our government to the center. I fear the consequence. I must close.

Respectfully yours,
(Signed) JAMES JEFFRIES.

Endorsed: No. 22. Circuit, chancery. Filed June 13, 1881. A. J. Houston, clerk.

* * * * * * *

EXHIBIT No. 15.

In the name of God I give as follows, on this the 20th day of August, A. D. 1875, my last will, to wit: I give all of my personal property and real estate to my children, to be equally divided among them. The child my wife now bears in utero shall be a full heir. Should it or any of the others of my children die before their maturity into lawful age of twenty-one years without issue from their natural bodies, then their share of my estate shall be equally divided among those of my children or their heirs, the issue of their bodies, who may then be alive. I charge Mrs. Mariah E. Salmon, my daughter, with six thousand dollars, and L. D. March, my son, with one thousand dollars, and John A. March, my son, with one thousand dollars. All of said charges are to stand against them, and all of the others of my children are to have money or property to equal them; then the remainder of my entire estate, real and personal, shall be equally divided. To my son, Lycurgus Dudley March, I give five thousand dollars extra as his inheritance from his
68 mother, the same being the one-half of the community property I and his mother made and owned at the time of her death. I give to Mrs. Sarah E. March, my dear wife, her full community interest in my estate, which is one-half of the entire estate save and except fifteen thousand dollars' worth of my whole estate, which was and is the separate property of myself and former wife when I married Mrs. Sarah E. March. I give to my dear wife homestead, our homestead in Mt. Enterprise to be hers in her own right for the purpose of reimbursing for the twelve hundred dollars she brought into the community after we married. I appoint my son, Lycurgus Dudley March, and my wife, Mrs. Sarah Elizabeth March, my executor and executrix, and I require no security from either of them unless my wife shall marry again; then she shall give security for any part of my estate she may have the care of. My son, Lycurgus Dudley March, shall not be required to give security unless he becomes to be a drunkard. It is my will that the probate court and all courts of Texas shall not have anything to do with my estate

save and except to record this will and fully receive and record a complete inventory of all of my money and real estate and personal property. It is my will that my executor and executrix named above proceed to collect all moneys due me and to pay all just debts, requiring in every instance any who may claim that I owe them to prove up their claim in due form of law. It is my will that they know that I do not owe anything except a few lawyers' fees, and that they know that I have paid the Wichi life insurance
69 policy up to next year, and that T. and S. Henderson are in honor bound to pay me fifteen thousand four hundred and thirty-nine dollars they took of my money. Now, resting in Jesus Christ, where I hope to forever exist, I do subscribe my full name to the foregoing will this the day and year above written, both will and name being in my handwriting.

SQUIRE WELLBORN MARCH. [SEAL.]

Signed, sealed, and placed in the hands of John A. Boyd, to the care of A. M. March, who shall keep this till I die, in the presence of these witnesses hereinto subscribed, to wit:

R. S. FINLEY.
T. JAMES.
JOHN A. BOYD.

Endorsement: No. 1286. Last will & testament of S. W. March. Filed September 20th, A. D. 1878. J. N. Still, clerk county court, Rusk county, Texas.

THE STATE OF TEXAS, }
County of Rusk. }

County Court Doing Probate Business. Oct'r Term, 1878.

In the Matter of the Estate of SQUIRE W. MARCH.

Personally came in open court, before the undersigned authority, R. R. Halton and Thompson Camp, well known to me as credible witnesses, who, after being duly sworn by me, severally deposeth and sayeth that they have each examined the instrument of writing purporting to be written and signed by Squire Wellborn March, on the 20th day of August, A. D. 1875, as his last will and testament, and say that we and each of us are well acquainted with handwriting of the said Squire W. March, having often seen him write, and that, to our and each — our knowledge & belief, the whole of said will, including the signature of said Squire Wellborn March, is in
70 his handwriting, & that the said S. W. March was, on the *the* said 20th of August, 1875, more than twenty-one years of age, & that we often saw him before & after the making of said will and he was, so far as we could see or know, of sound mind.

R. R. HALTON.
THOMPSON CAMP.

Sworn to and subscribed before me, in open court, this the 28th day of October, 1878.

J. N. STILL,
Clerk County Court, Rusk County.

Endorsement: No. 1286. Estate of S. W. March. Proof of will. Filed Oct. 25th, 1878. J. N. Still, clerk.

County Court. October 25, 1878.

Estate of S. W. MARCH, Deceased. 1286.

This day came Mrs. S. E. March, surviving wife of S. W. March, and propounds his last will and testament for probate, and it appearing to the satisfaction of the court, by the affidavit of Thompson Camp and R. R. Halton, that said will was wholly, including the signature, in the handwriting of said S. W. March, and that said S. W. March, at the time of making said will, to wit, on the 20th day of August, 1875, was twenty-one years of age & of sound mind; it further appearing by proof that L. D. March, a coexecutor named in said will, had renounced his said executorship in favor of his coexecutrix, S. E. March, it is therefore ordered, adjudged, and decreed that said will be probated and duly recorded as the last will and testament of said Squire Wellborn March, requiring no action
71 of court except to probate said will and to require and receive a return of an inventory & appraisement of the property of said estate, and letters testamentary issue to Mrs. S. E. March, one of executors named in the said will, for due execution thereof, and that no official bond be required of her as provided in said will.

THE STATE OF TEXAS, }
County of Rusk. }

I, J. N. Still, county clerk within and for the county of Rusk and State aforesaid, do hereby certify that the foregoing is a true and correct transcript of the will, affidavit of proof, and order of probate of the will of Squire W. March, deceased, as the same appears of record in my office.

L. S. Given under my hand and seal of office, in Henderson, this 8th day of January, A. D. 1881.

(Signed) J. N. STILL,
County Clerk, Rusk County, Texas.

Endorsed: Estate of S. W. March, deceased. Copy of will, &c. No. 22. Circuit, chancery. Filed June 13, 1881. A. J. Houston, clerk.

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EXHIBIT No. 16.

I, George C. Dugan, of the county of Grayson and State of Texas, knowing the uncertainty of life and believing that I have sufficient mind and memory to comprehend my property as well as those that

may have claims upon it after my death, and being desirous that my property shall descend and pass in that event in a certain
72 manner, I do make and ordain and constitute and establish this as my last will and testament, hereby revoking all other wills by me heretofore made; and in making this will I recognize the fact that all property, both real and personal, acquired by me since my marriage is the community property of myself and my beloved wife, Harriett Jane—one-half to each; that all property which I have acquired by gift, devise, or descent is my own seperate property; and in making this devise I will enumerate my seperate property and its disposition, leaving all that is not herein enumerated as seperate property to be community property.

In considering the claims of all who should have an interest in my effects I believe that the one-half given to my beloved wife as her right under the community law is not only sufficient to support her bountifully in her declining years, but it is my will that she take nothing of my property, either real or personal, save and except that which may be allot-ed her under the homestead exemption and the exemption of personal property, including the household and kitchen furniture and year's supply of provisions, &c., and the one-half community property after payment of all debts.

I own in my own individual right the following real estate, to wit:

1,476 acres, my own head-right, granted to me by the Republic of Texas as a single man, situated on Choctaw and Mill creek, Grayson county.

73 640 acres, part of the head-right of William Tyler, situated on Cornelison creek, in Grayson county. This land was bought and paid for and deeded to me before marriage, but the patent did not issue to me as assignee until after marriage, but I have always held it as my separate property.

640 acres, one-half of a 1,280 county warrant, issued to William Cox for military services, situated on divide between Cornelison and Mill creek, being the land on which is my farm and place where I have heretofore lived. A part of the improvements on this farm was made before marriage and a part afterwards, say one-fourth before and three-fourths after marriage.

320 acres, military county claim, issued to James Crawford, patented to me as assignee, situated in same county, adjoining and near to the William Cox survey.

320 acres, bounty claim, — John Walker, patented to me as assignee, located about one mile north of the public square, Gainesville, Cooke county. This land was bought and paid for before marriage, but was patented afterwards.

598½ acres, head-right of Daniel Dugan, situated on Mill creek and the edge of Warren prairie, in Grayson county. This land I purchased from my father, Daniel Dugan. These several tracts of land, being my separate property, as stated, and containing in the aggregate 3,994½ acres, I desire distributed as follows:

Divide the same according to value into six equal parts.
74 Of these six equal parts my children, to wit, William P.,

Daniel D., Lutie D., George H., and Mollie, shall each receive one equal part, the remaining one-sixth to be equally divided—one-half to my children above named and one-half to my daughter, Georgiana, wife of William M. Shannon.

All other lands that I own, wheresoever situate, is community property. These lands lie in Grayson and surrounding counties and aggregate 13,000 acres, not including the property in Sherman. Now, one-half of this property being mine, it is my will that my one-half descend as follows: Divide into six equal parts in value; then to each of my five children first above named an equal one-sixth part, and — the remaining one-sixth part one-half to my said five children and one-half to my daughter Georgiana, wife of William M. Shannon.

All the personal property which I possess is community property. My wife, Harriett Jane, takes from it what the laws of the State give to her as her community and exemption interest. The remainder being mine, it is my will that the same be equally divided between all my children. Whatever changes—purchases or sales—I may hereafter make in my property, and whether increased or diminished, it is my will that the same, both real and personal, descend and pass to my children in the amount and manner to each as stated. After this will is probated or proved up and after debts of every kind that may be established
75 against my estate *and* paid, and that these debts are paid be an ascertained fact, then I wish the judge having jurisdiction of probate matters for Grayson county, or the clerk of his court, to appoint three competent, disinterested men to divide the property, both real and personal, in so far as they may deem the same practicable, into six equal parts, and again divide the sixth part, as in this will described, and allot to each legatee his or her respective part, and make their reports under oath to said judge or clerk that they have equally divided the same according to this to the best of their ability and judgment, and this report so made by said three commissioners to be entered of record and to be final and conclusive upon each of my said children and heirs. Should it be deemed impracticable to divide any of the property, either real or personal, then my executors to sell the same on such terms as may be deemed best and divide the proceeds thereof as herein stated.

I hereby appoint my two oldest sons, to wit, William P. Dugan and Daniel D. Dugan, executors of this will, and in so far as my will is concerned they are not required to give bond, I having full confidence in their integrity, but should any of the other heirs require a bond, then they must give it. I wish them to prove up this will, to file an inventory and appraisement of my estate; then to proceed and settle up all demands for and against the estate, and then see that the same is divided as herein provided. Also I
76 wish my said executors to retain possession and control of all the property alloted to any of the children who may be minors until they are of age or marry, and to use enough of the property belonging to each minor to give her or him, as the case may be, at least a good English education. To insure protection of

the interest of such minors, a bond for the protection of their interest must be given.

In testimony whereof I have subscribed this will with my own hand in the presence of G. A. Dickerman, W. H. Lankford, and J. C. Williams, who hereto subscribe their names as witnesses in my presence at my request.

This 21st day of December, A. D. 1875.

GEORGE C. DUGAN.

Witness:
G. A. DICKERMAN.
W. H. LANKFORD.

Filed Jan'y 10, 1881.

G. A. DICKERMAN, *Co. Clerk.*

THE STATE OF TEXAS, }
Grayson County. }

I, G. A. Dickerman, county clerk of Grayson county, Texas, do hereby certify that the foregoing seven pages of writing is a true and correct copy of the last will and testament of George C. Dugan, deceased, as the same appears on file and of record in my office.

Witness my hand and seal of office, at Sherman, Texas, L. S. this 2d June, A. D. 1881.

(Signed) G. A. DICKERMAN,
Co. Clerk, Grayson County, Texas.
77 By A. P. FINLEY, *D'p'ty.*

Endorsed: No. 22. Circuit chancery. Filed June 13, 1881. A. J. Houston, clerk.

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EXHIBIT No. 17.

STATE OF LOUISIANA, }
Parish of Caddo. }

Personally appeared before me, the undersigned authority, W. H. Cundiff, to me well known, who deposes and says upon his oath that Phineas Y. Robinson or Fineas Roberson, whose name is signed to a transfer on the back of a land certificate issued to said Roberson by the board of land commissioners of Houston county, State of Texas, on the first day — March, A. D. 1838, No. 127, for one league and labor of land, is dead to the best of his knowledge & belief from information received from his family or relatives; also that George Allen, Oscar Engledow, and H. B. Dance, subscribing witnesses to the said transfer, are dead, as he is informed and believes. Said transfer is made to Warner L. Underwood and dated the 5th day of March, A. D. 1838.

W. H. CUNDIFF.

Sworn to and subscribed before me the 4th day of Sept., 1880, at 9 o'clock a. m. of said day.

[L. S.] LEWIS E. CARTER,
Notary Public in and for Caddo Parish, State of Louisiana.

STATE OF LOUISIANA, }
Parish of Caddo. }

Before me, Lewis E. Carter, a duly commissioned and
78 qualified notary public in and for Caddo parish, State of Louisiana, this day personally appeared James R. Arnold, who is personally well known to me, and whose name is hereto subscribed, and who resides in the parish and State aforesaid, who, after being duly sworn by me, states upon his oath that he was personally acquainted with Oscar Engledow & H. B. Dance, whose names are subscribed as witnesses to the annexed transfer and conveyance of a certificate for one league & labor of land issued by the board of land commissioners of Houston county, State of Texas, on the first day of March, A. D. 1838, to Fincas Roberson, No. 127; that the said Oscar Engledow and H. B. Dance, witnesses aforesaid, are dead, and that affiant is well acquainted with their signatures and handwriting and that the said signatures are the genuine signatures of Oscar Engledow and H. B. Dance, witnesses as aforesaid; and affiant further says that he is in nowise interested in the said land certificate or the land that may have been located by virtue thereof.

JAMES R. ARNOLD.

Sworn to & subscribed before me this 4th day of Sept., 1880, at 10 o'clock a. m. of said day.

[L. S.] LEWIS E. CARTER,
Notary Public in and for Caddo Parish, State of Louisiana.

79 STATE OF LOUISIANA, }
Parish of Caddo. }

I, Lewis E. Carter, a notary public in and for said State and parish, do certify that James R. Arnold, whose signature appears to the foregoing affidavit, was by me duly sworn to all the facts therein stated; that the said James R. Arnold is personally well known to me, and that he resides in said State and parish and is a credible person; that he signed the said affidavit in my presence.

To certify all of which I hereto set my official seal and signature, at my office, in the city of Shreveport, in the parish of Caddo, in the State of Louisiana, on this the 4th day of September, A. D. 1880.

[L. S.] LEWIS E. CARTER,
Notary Public.

STATE OF ARKANSAS, }
County of Little River. }

Before me, John M. McGill, a notary public in and for said State and county, personally appeared James S. Dallerhide, who is personally well known to me, and whose name is hereto subscribed, and who resides in the county and State aforesaid, and who, after being duly sworn by me, states on oath that he was well acquainted with Phineas Y. Robinson, whose name is subscribed as grantor to the annexed transfer and conveyance of a certificate for one league and

one labor of land issued by the board of land commission-
80 ers of Houston county, in the State of Texas, on the 1st day of March, A. D. 1838, to said Robinson, No. 127; that the said grantor is dead, and that affiant is well acquainted with his signature and handwriting, having often seen him write, & that said signature is the genuine signature of said Robinson, grantor as aforesaid; and affiant further says that he is in nowise interested in the said land certificate or the land located by virtue thereof. Said transfer is on back of said certificate, No. 127.

J. S. DALLERHIDE.

Sworn to and subscribed before me this 29th day of September, 1880.

[L. S.] JOHN McGILL,
Notary Public.

STATE OF ARKANSAS, }
County of Little River. }

I, John M. McGill, notary public in and for said State and county, do hereby certify that James S. Dallarhide, whose signature appears to the foregoing affidavit, was by me duly sworn to all the facts therein stated, and that the said James S. Dallarhide is personally well known, and that he resides in said State & county and is a credable person; that he signed the said affidavit in my presence. To certify all of which I hereto set my official seal and signature, at my office, in the town of Rocky Comfort, in the county of Little River and State of Arkansas, on this 29th day of September, 1880.

[L. S.] JOHN M. McGILL,
Notary Public.

81 STATE OF ARKANSAS, }
County of Little River. }

Before me, John M. McGill, a notary public in and for said State and county, personally appeared James Morriss, who is personally well known to me, and whose name is hereto subscribed, and who resides in the county and State aforesaid, and who, after being duly sworn by me, states on oath that he was well acquainted with Phineas Y. Robinson, whose name is subscribed as grantor to the annexed transfer and conveyance of a certificate for one league and one, 1, labor of land issued by the board of land commissioners of Houston county, of the State of Texas, on the first day of March, 1838, to said Robinson, No. 127; that the said grantor is dead, and that affiant is well acquainted with his signature and handwriting, having seen him write, and that said signature is the genuine signature of said Robinson as aforesaid; and affiant further says that he is nowise interested in the said land certificate or the land located by virtue thereof. Said transfer is on the back of said certificate No. 127.

JAMES MORRISS.

Sworn to and subscribed before me this 30th day of September, A. D. 1880.

[SEAL.] JOHN M. McGILL,
Notary Public.

STATE OF ARKANSAS,
County of Little River.

I, John M. McGill, notary public in and for said county and State, do hereby certify that James Morriss, whose signature ap-
82 pears to the foregoing affidavit, was by me duly sworn to all the facts therein stated, and that the said James Morriss is personally well known to me, and that he resides in said State and county and is a credable person; that he signed said affidavit in my presence. To certify all of which — hereto set my official seal and signature, at my office, in the town of Rocky Comfort, in the county of Little River and State of Arkansas, on this the 30th day of September, A. D. 1880.

[L. S.] JOHN M. McGILL,
Notary Public.

THE STATE OF TEXAS,
County of Harrison.

Before me, R. P. Littlejohn, a notary public in and for said Harrison county, on this day personally appeared James H. Starr, who is personally well known to me, and whose name is hereto subscribed, and who resides in the city of Marshall, in said Harrison county, who, after being duly sworn by me, deposes and says that he was personally well acquainted with Oscar Engledow, now deceased, formerly a resident of Nacogdoches county, Texas, and knew his handwriting and signature, having often seen him write, and is confident that the signature Oscar Engledow, appearing as a witness, with Geo. Allen and H. B. Dance, to the assignment of the annexed land certificate by Phineass Y. Roberson to Warner L. Underwood, is the genuine signature of said Engledow. Said assignment bears date March 5th, 1838, and is endorsed on a certificate for one league and labor of land which was issued by the board of land commissioners for the county of Houston to Fineass Robinson, dated March 1st, 1838; and affiant further says that he is
83 in nowise interested in the said land certificate or the land that may have been located by virtue thereof.

JAS. H. STARR.

Sworn to and subscribed before me this second day of October, A. D. 1880.

R. P. LITTLEJOHN,
[L. S.] *Notary Public of said Harrison County, Texas.*

STATE OF TEXAS,
County of Harrison.

I, R. P. Littlejohn, a notary public in and for said Harrison county, do hereby certify that James H. Starr, whose signature ap-

pears to the foregoing affidavit, was by me duly sworn to all the facts therein stated; that the said James H. Starr is personally well known to me, and that he resides in said State and county and is a credible person; that he signed the said affidavit in my presence. To all of which I hereto set my official seal and signature, at my office, in the city of Marshall, in the county of Harrison, in the State of Texas, on this the second day of October, A. D. 1880.

R. P. LITTLEJOHN,
[SEAL.] *Notary Public.*

GENERAL LAND OFFICE, AUSTIN, *June 1st*, 1880.

I, W. C. Walsh, com'r of the gen'l land office of the State of Texas, hereby certify that the foregoing is a true and correct copy of the affidavits now on file in this office.

84 In testimony whereof I hereunto set my hand and affix the impress of the seal of said office the date last above written.

(Signed) W. C. WALSH,
Commissioner.

Endorsed: No. 22. Circuit, chancery. Certified copies of acknowledgement, &c. Filed June 13, 1881. A. J. Houston, clerk.

* * * * * * *

EXHIBIT No. 18.

No. 228. Vol. 12.

In the name of the State of Texas, to all to whom these presents shall come:

Know ye I, E. M. Pease, Governor of the State aforesaid, by virtue of the power vested in me by law and in accordance with the laws of said State in such case made and provided, do by these presents grant to S. W. March, assignee of Finesse Roberson, his heirs or assigns forever, one league and one labor of land, situated and described as follows: In Cook county, on Red River, about 32 miles N. 55 W. from Gainesville, by virtue of certificate No. 127, issued by the board of land commissioners of Houston county on the 1st day of March, 1838, and transferred to said March on the 23d day of June, 1855, beginning at a stake on the bank of Red River, Thomas Scott's N. W. corner, from which a burr oak bears N. 39 W. 20 varas; an elm bears N. 44° E. 30 varas; thence south 4,018 varas, Scott's S. W. corner;

9,672 varas to corner; thence west 2,550 varas to corner;

85 thence north 10,720 varas to a stake on the banks of the river, from which a cottonwood bears S. 10° E. 80 varas; anothers bears N. 74° W. 14 varas; thence down the river, with its meanders, to the place of beginning, I hereby relinquishing to him, the said S. W. March, and his heirs or assigns forever all the right and title in and to said land heretofore held and possessed by the said State, and I do hereby issue this letter patent for the same.

In testimony whereof I have caused the seal of the State to be affixed, as well as the seal of the general land office. Done at the city

of Austin on the eighth day of August, in the year of our Lord one thousand eight hundred and fifty-five.

E. M. PEASE, *Governor.*

ROB'T M. ELGIN,
Commissioner of the G'l Land Office.

GENERAL LAND OFFICE, AUSTIN, *May 22nd*, 1858.

I, Francis M. White, commissioner of the general land office of the State of Texas, do hereby certify that the foregoing is a true copy of the original records now kept in this office.

L. S. In testimony whereof I hereunto set my hand and affix the seal of said office day and date first above written.

(Signed) FRANCIS M. WHITE.

Endorsed: No. 22. Circuit, chancery. Copy of patent. Filed June 13, 1881. A. J. Houston, clerk.

86 UNITED STATES OF AMERICA:

Circuit Court, Fifth Circuit and Northern District of Texas.

The President of the United States of America to Daniel Cable, Greeting:

You are hereby commanded to appear personally before the honorable circuit court of the United States for the northern district of Texas, in the fifth circuit, at a court to be holden at the city of Dallas, in and for said circuit, on the first Monday, it being the 5th day, of December next, or whensoever the court shall be there, to answer a bill exhibited against you, Daniel Cable, Harriett J. Dugan, William P. Dugan, Daniel D. Dugan, Georgia Shannon and her husband, William M. Shannon, and Mollie J. Dugan, George H. Dugan, Sarah E. March, John A. March, George March, Webster March, Wilburn March, Murphy March, Carry March, Maud March, Andrew Smith, Andrew Tucker, David Musick, B. F. Lutterell, H. C. Luttrell, William Tucker, James Holt, J. D. Parnell, W. G. Salmon and Lottie Salmon, and A. M. Robbins, by Ida Underwood; Josey Underwood, Warner Underwood, and James H. R. Cundiff, and to do further and receive what the court shall have considered in that behalf; and this that you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice
L. S. of the Supreme Court of the United States, and the seal of the circuit court of the United States for the northern dis-
87 trict of Texas, at the city of Dallas, this 13th day of June, eighteen hundred and eighty-one, and of the Independence of the United States of America the 105th year.

(Signed) A. J. HOUSTON,
Clerk U. S. Circuit Court, Northern District of Texas, at Dallas.

The defendant Daniel Cable is required to enter his appearance

in the above suit in the clerk's office on or before the first Monday of August next; otherwise the bill will be taken as confessed.

(Signed) A. J. HOUSTON, *Clerk.*

Endorsed: No. 22. U. S. circuit court. Chancery. Ida Underwood *et als. vs.* H. J. Dugan *et als.* Subpœna. Issued June 13, 1881. Returnable August rules, 1881. Houston, clerk. Returned and filed 13th day of July, 1881. A. J. Houston, clerk.

This subpœna came to hand July 5th, 1881, and executed July 8th, 1881, near Burlington, Montague county, by delivering in person a true copy of this writ to the within-named Daniel Cable.

(Signed) A. B. NORTON,
U. S. Marshal, Nor. Dist. of Tex.,
By THOS. M. WRIGHT, *Dep-ty.*

* * * * * * *

UNITED STATES OF AMERICA:

Circuit Court, Fifth Circuit and Northern District of Texas.

The President of the United States of America to David Music, Greeting:

88 You are hereby commanded to appear personally before the honorable circuit court of the United States for the northern district of Texas, in the fifth circuit, at a court to be holden at the city of Dallas, in and for said circuit, on the first Monday, it being the 5th day, of December next, or whensoever the said court shall be there, to answer a bill exhibited against you, David Musick, Harriet J. Dugan, William P. Dugan, Daniel D. Dugan, Georgia Shannon and her husband, William M. Shannon, and Mollie J. Dugan, George H. Dugan, Sarah E. March, John A. March, George March, Webster March, Wilburn March, Murphy March, Carrie March, Maud March, Andrew Smith, Daniel Cable, Andrew Tucker, B. F. Lutterell, H. C. Lutterell, William Tucker, James Holt, J. D. Parnell, W. G. Salmon, Lottie Salmon, and A. M. Robbins, by Ida Underwood; Josey Underwood, Warner Underwood, and James H. R. Cundiff, and to do further and receive what the said court shall have considered in that behalf; and this that you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the northern district of Texas, at the city of Dallas, this 13th day of June, eighteen hundred and eighty-one, and of the Independence of the United States of America the 105th year.

L. S.

(Signed) A. J. HOUSTON, *Clerk.*

89 The defendant David Musick is required to enter his appearance in the above suit in the clerk's office on or before

the first Monday of August next; otherwise the bill will be taken as confessed.

(Signed) A. J. HOUSTON, *Clerk.*

Endorsed: No. 22. Circuit, chancery. Ida Underwood *et als. vs.* H. J. Dugan *et als.* Subpœna. Issued June 13th, 1881. Returnable August rules, 1881. Houston, clerk. Returned and filed 13th day of July, 1881. A. J. Houston, clerk.

This subpœna came to hand July 5th, 1881, and executed July 8th, 1881, near Burlington, Montague county, Tex., by delivering in person a true copy of this subpœna to the within-named David Musick.

(Signed) A. B. NORTON,
U. S. Marshal, Nor. Dist. Tex.,
By THOS. M. WRIGHT, *Dept.*

* * * * * * *

UNITED STATES OF AMERICA:

Circuit Court, Fifth Circuit and Northern District of Texas.

The President of the United States of America to Harriet J. Dugan, Greeting:

You are hereby commanded to appear personally before the honorable circuit court of the United States for the northern district of Texas, in the fifth circuit, at a court to be holden at the city of Dallas, in and for said circuit, on the first Monday, it being the
90 5th day, of December next, or whensoever the said court shall be there, to answer a bill exhibited against you, Harriet J. Dugan, William P. Dugan, Daniel D. Dugan, Georgia Shannon and her husband, William M. Shannon, and Mollie J. Dugan, George H. Dugan, Sarah E. March, John A. March, George March, Webster March, Wilburn March, Murphy March, Carrie March, Maud March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, B. F. Lutterell, H. C. Lutterell, William Tucker, James Holt, J. D. Parnell, W. G. Salmon, Lottie Salmon, A. M. Robbins, by Ida Underwood; Josey Underwood, Warner Underwood, and James H. R. Cundiff, and to do further and receive what the said court shall have considered in that behalf; and this that you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the northern district of Texas, at the
L. S. city of Dallas, this 13th day of June, eighteen hundred and eighty-one, and of the Independence of the United States of America the 105th year.

(Signed) A. J. HOUSTON,
Clerk U. S. Circuit Court, Northern District of Texas, at Dallas.

The defendant Harriet J. Dugan is required to enter her
91 appearance in the above suit in the clerk's office on or before the first Monday of August next; otherwise the bill will be taken as confessed.

(Signed) A. J. HOUSTON, *Clerk.*

Endorsed: No. 22. U. S. circuit court. Chancery. Ida Underwood *et als. vs.* H. J. Dugan *et als.* Subpœna. Issued June 13th, 1881. Returnable August rules, 1881. Houston, clerk. Returned and filed 13th day of July, A. D. 1881. A. J. Houston, clerk.

This subpœna came to hand July 7th, 1881, and executed July 12th, 1881, at Sherman, Grayson county, Texas, by delivering in person a true copy of this subpœna to Harriet J. Dugan.

(Signed) A. B. NORTON,
U. S. Marshal, Northern Dist. of Tex.,
By THOS. M. WRIGHT, *Dept.*

* * * * * * *

UNITED STATES OF AMERICA:

Circuit Court, Fifth Circuit and Northern District of Texas.

The President of the United States of America to Geo. H. Dugan, Greeting:

You are hereby commanded to appear personally before the honorable circuit court of the United States for the northern district of Texas, in the fifth circuit, at a court to be holden at the city of Dallas, in and for the said circuit, on the first Monday, it being the 5th day, of December next, or whensoever the said court shall
92 be there, to answer a bill exhibited against you, George H. Dugan, Harriet J. Dugan, William P. Dugan, Daniel D. Dugan, Georgia Shannon and her husband, William M. Shannon; Mollie J. Dugan, Sarah E. March, John A. March, George March, Webster March, Wilburn March, Murphy March, Carrie March, Maud March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, B. F. Lutterell, J. C. Lutterell, William Tucker, James Holt, J. D. Parnell, W. G. Salmon, Lottie Salmon, and A. M. Robbins, by Ida Underwood; Josey Underwood, Warren Underwood, and James H. R. Cundiff, and to do further and receive what the said court shall have considered in that behalf; and this that you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, — for the northern district
SEAL. of Texas, at the city of Dallas, this 13th day of June, eighteen hundred and eighty-one, and of the Independence of the United States of America the 105th year.

(Signed) A. J. HOUSTON,
Clerk U. S. Circuit Court, Northern District of Texas, at Dallas.

The defendant George H. Dugan is required to enter his appearance in the above suit in the clerk's office on or before the first Monday of August next; otherwise the bill will be taken as confessed.

(Signed) A. J. HOUSTON, *Clerk.*

92 Endorsed: No. 22. U. S. circuit court. Chancery. Ida Underwood *et als. vs.* H. J. Dugan *et als.* Subpœna. Issued June 13th, 1881. Returnable August rules, 1881. Houston, clerk. Returned and filed 27th day of July, A. D. 1881. A. J. Houston, clerk.

This subpœna came to hand June 23d, 1881, and executed at Sherman, Texas (Grayson county), July 25th, 1881, by delivering to George H. Dugan in person a true copy of this writ.

(Signed) A. B. NORTON,
U. S. Marshal, Nor. Dist. of Texas,
By THOS. M. WRIGHT, *Dept.*

* * * * * * *

UNITED STATES OF AMERICA:

Circuit Court, Fifth Circuit and Northern District of Texas.

The President of the United States of America to J. D. Parnell, Greeting:

You are hereby commanded to appear personally before the honorable circuit court of the United States for the northern district of Texas, in the fifth circuit, at a court to be holden at the city of Dallas, in and for said circuit, on the first Monday, it being the 5th day, of December next, or whensoever the said court shall be there, to answer a bill exhibited against you, J. D. Parnell, Harriet J. Dugan, William P. Dugan, Daniel D. Dugan, Georgia Shannon and her husband, William M. Shannon, and Mollie J. Dugan, George H. Dugan, Sarah E. March, John A. March, George March, Webster March, William March, Murphy March, Carrie March, Maud
94 March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, B. F. Lutterell, H. C. Lutterell, William Tucker, James Holt, W. G. Salmon, & A. M. Robbins, by Ida Underwood; Josey Underwood, Warner Underwood, and James H. R. Cundiff, and to do further and receive what the court shall have considered in that behalf; and this that you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the northern district of
L. S. Texas, at the city of Dallas, this 13th day of June, eighteen hundred and eighty-one, and of the Independence of the United States of America the 105th year.

(Signed) A. J. HOUSTON,
Clerk U. S. Circuit Court, Northern District of Texas, at Dallas.

The defendant J. D. Parnell is required to enter his appearance in the above suit in the clerk's office on or before the first Monday of August next; otherwise the bill will be taken as confessed.

(Signed) A. J. HOUSTON, *Clerk.*

Endorsed: No. 22. U. S. circuit court. Chancery. Ida Underwood *et als. vs.* H. J. Dugan *et als.* Subpœna. Issued June
95 13th, 1881. Returnable August rules, 1881. Houston, clerk. Returned and filed 13th day of July, A. D. 1881. A. J. Houston, clerk.

This subpœna came to hand July 5th, 1881, and executed July 8, near Burlington, Montague Co., Texas, by delivering in person to the within-named J. D. Parnell a true copy of this writ.

(Signed) A. B. NORTON,
U. S. Marshal, Northern District of Tex.,
By THOS. M. WRIGHT, *Dept.*

* * * * * * *

UNITED STATES OF AMERICA:

Circuit Court, Fifth Circuit and Northern District of Texas.

The President of the United States of America to William P. Dugan, Greeting:

You are hereby commanded to appear personally before the honorable circuit court of the United States for the northern district of Texas, in the fifth circuit, at a court to be holden at the city —, in and for said circuit, on the first Monday, it being the 5th day, of December next, or whensoever the said court shall be there, to answer a bill exhibited against you, William P. Dugan, Harriet J. Dugan, Daniel D. Dugan, Georgia Shannon and her husband, William M. Shannon; Mollie J. Dugan, George H. Dugan, Sarah E. March, John A. March, George March, Webster March, Wilburn March, Murphy March, Carrie March, Maud March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, B. F. Lutterell, H. C. Lutterell, William Tucker, James Holt, J. D. Parnell, W. G. Salmon,
96 Lottie Salmon, and A. M. Robbins, by Ida Underwood; Josey Underwood, Warner Underwood, and James H. R. Cundiff, and to do further and receive what the said court shall have considered in that behalf; and this that you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit
L. S. court of the United States for the northern district of Texas, at the city of Dallas, this 13th day of June, eighteen hundred and eighty-one, and of the Independence of the United States of America the 105th year.

(Signed) A. J. HOUSTON,
Clerk U. S. Circuit Court, Northern District of Texas, at Dallas.

The defendant William P. Dugan is required to enter an appearance in the above suit in the clerk's office on or before the first Monday of August next; otherwise the bill will be taken as confessed.

(Signed) A. J. HOUSTON, *Clerk.*

Endorsed: No. 22. U. S. circuit court. Chancery. Ida Underwood *et als. vs.* H. J. Dugan *et als.* Subpœna. Issued June 13th, 1881. Returnable August rules, 1881. Houston, clerk. Returned and filed 13th day of July, A. D. 1881. A. J. Houston, clerk.

97 This subpœna came to hand July 7th, 1881, and executed at Sherman, July 12th, 1881, by delivering in person to William P. Dugan a true copy of this subpœna.

(Signed) A. B. NORTON,
U. S. Marshal, Northern Dist. of Texas,
By THOS. M. WRIGHT, *Dept.*

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UNITED STATES OF AMERICA:

Circuit Court, Fifth Circuit and Northern District of Texas.

The President of the United States of America to Mollie J. Dugan, Greeting:

You are hereby commanded to appear personally before the honorable circuit court of the United States for the northern district of Texas, in the fifth circuit, at a court to be holden at the city of Dallas, in and for said circuit, on the first Monday, it being the 5th day, of December next, or whensoever the said court shall be there, to answer a bill exhibited against you, Mollie J. Dugan, Harriet J. Dugan, William P. Dugan, Daniel D. Dugan, Georgia Shannon and her husband, William M. Shannon; George H. Dugan, Sarah E. March, John A. March, George March, Webster March, Wilburn March, Murphy March, Carrie March, Maud March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, B. F. Lutterell, H. C. Lutterell, William Tucker, James Holt, J. D. Parnell, W. G. Salmon, Lottie Salmon, and A. M. Robbins, by Ida Underwood, Josey Underwood, Warner Underwood, and James H. R. Cundiff, and to do further and receive what the said court shall have considered in that behalf; and this that you are not to omit under the penalty of two hundred and fifty dollars.

98 Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the L. S. circuit court of the United States for the northern district of Texas, at the city of Dallas, this 13th day of June, eighteen hundred and eighty-one, and of the Independence of the United States of America the 105th year.

(Signed) A. J. HOUSTON,
Clerk U. S. Circuit Court, Northern District of Texas, at Dallas.

The defendant Mollie J. Dugan is required to enter her appearance in the above suit in the clerk's office on or before the first Monday of August next; otherwise the bill will be taken as confessed.

(Signed) A. J. HOUSTON, *Clerk.*

Endorsed: No. 22. U. S. circuit court. Chancery. Ida Underwood *et als. vs.* H. J. Dugan *et als.* Subpœna. Issued June 13th, 1881. Returnable August rules, 1881. Houston, clerk. Returned and filed 13th day of July, A. D. 1881. A. J. Houston, clerk.

This subpœna came to hand July 7th, 1881, and executed July 12th, at Sherman, Grayson county, by delivering in person to Mollie J. Dugan a true copy of this subpœna.

(Signed) A. B. NORTON,
U. S. Marshal, Northern District of Tex.,
By THOS. M. WRIGHT, *Dept.*

99 UNITED STATES OF AMERICA:

Circuit Court, Fifth Circuit and Northern District of Texas.

The President of the United States of America to William Tucker, Greeting:

You are hereby commanded to appear personally before the honorable circuit court of the United States for the northern district of Texas, in the fifth circuit, at a court to be holden at the city of Dallas, in and for said circuit, on the first Monday, it being the 5th day, of December next, or whensoever the said court shall be there, to answer a bill exhibited against you, William Tucker, Harriet J. Dugan, William P. Dugan, David D. Dugan, Georgia Shannon and her husband, William M. Shannon, and Mollie J. Dugan, George H. Dugan, Sarah E. March, John A. March, George March, Webster March, Wilburn March, Murphy March, Carrie March, Maud March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, B. F. Lutterell, H. C. Lutterell, James Holt, J. D. Parnell, W. G. Salmon, Lottie Salmon, & A. M. Robbins, by Ida Underwood, Josey Underwood, Warner Underwood, and James H. R. Cundiff, and to do further and receive what the court shall have considered in that behalf; and this that you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of
L. S. the Supreme Court of the United States, and the seal of the circuit court of the United States for the northern district of
100 Texas, at the city of Dallas, this 13th day of June, eighteen hundred and eighty-one, and of the Independence of the United States of America the 105th year.

(Signed) A. J. HOUSTON,
Clerk U. S. Circuit Court, Northern District of Texas, at Dallas.

The defendant William Tucker is required to enter his appearance in the above suit in the clerk's office on or before the first Monday of August next; otherwise the bill will be taken as confessed.

(Signed) A. J. HOUSTON, *Clerk.*

Endorsed: No. 22. U. S. circuit court. Chancery. Ida Underwood *et als. vs.* H. J. Dugan *et als.* Subpœna. Issued June 13th, 1881. Returnable August rules, 1881. Houston, clerk. Returned and filed 13th day of July, A. D. 1881. A. J. Houston, clerk.

This subpœna came to hand July 5th, 1881, and executed July 8th, '81, near Burlington, Montague county, by delivering in person to William Tucker a true copy of this writ.

(Signed) A. B. NORTON,
U. S. Marshal, N. Dist. of Texas,
By THOS. M. WRIGHT, *Dep'ty.*

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UNITED STATES OF AMERICA:

Circuit Court, Fifth Circuit and Northern District of Texas.

101 The President of the United States of America to B. F. Lutterell, Greeting:

You are hereby commanded to appear personally before the honorable circuit court of the United States for the northern district of Texas, in the fifth circuit, at a court to be holden at the city of Dallas, in and for said circuit, on the first Monday, it being the 5th day, of December next, or whensoever the said court shall be there, to answer a bill exhibited against you, B. F. Lutterell, Harriet J. Dugan, William P. Dugan, Daniel D. Dugan, Georgia Shannon and her husband, William M. Shannon, and Mollie J. Dugan, George H. Dugan, Sarah E. March, John A. March, George March, Webster March, Wilburn March, Murphy March, Carrie March, Maud March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, H. C. Lutterell, William Tucker, James Holt, J. D. Parnell, W. G. Salmon, Lottie Salmon, and A. M. Robbins, by Ida Underwood, Josey Underwood, Warner Underwood, and James H. R. Cundiff, and to do further and receive what the said court shall have considered in that behalf; and this that you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the northern district of Texas, at the city of Dallas, this 13th day of June, eighteen
L. S. 102 hundred and eighty-one, and of the Independence of the United States of America the 105th year.

(Signed) A. J. HOUSTON,
Clerk U. S. Circuit Court, Northern District of Texas, at Dallas.

The defendant B. F. Lutterell is required to enter his appearance in the above suit in the clerk's office on or before the first Monday of August next; otherwise the bill will be taken as confessed.

(Signed) A. J. HOUSTON, *Clerk.*

Endorsed: No. 22. U. S. circuit court. Chancery. Ida Underwood *et als. vs.* H. J. Dugan *et als.* Subpœna. Issued June 13th, 1881. Houston, clerk. Returnable August rules, 1881. Returned and filed 13th day of July, A. D. 1881. A. J. Houston, clerk.

This subpœna came to hand July 5th, 1881, and executed July 8th, 1881, near Burlington, Montague county, Texas, by delivering in person a true copy of this subpœna to the within-named B. F. Lutterell.

(Signed) A. B. NORTON,
U. S. Marshal, N. Dist. Texas,
By THOS. M. WRIGHT, *Dept.*

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UNITED STATES OF AMERICA:

Circuit Court, Fifth Circuit and Northern District of Texas.

The President of the United States of America to Georgia Shannon, Greeting:

You are hereby commanded to personally appear before
103 the honorable circuit — of the United States for the northern district of Texas, in the fifth circuit, at a court to be holden at the city of Dallas, in and for said circuit, on the first Monday, it being the 5th day, of December next, or whensoever the said court shall be there, to answer a bill exhibited against you, Georgia Shannon, Harriet J. Dugan, William P. Dugan, Daniel D. Dugan, William M. Shannon, Mollie J. Dugan, George H. Dugan, Sarah E. March, John A. March, George March, Webster March, Wilburn March, Murphy March, Carrie March, Maud March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, B. F. Lutterell, R. C. Lutterell, William Tucker, James Holt, J. D. Parnell, W. G. Salmon, Lottie Salmon, and A. M. Robbins, by Ida Underwood, Josey Underwood, Warner Underwood, and James H. R. Cundiff, and to do further and receive what the said court shall have considered in that behalf; and this that you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the
L. S. circuit court of the United States for the northern district of Texas, at the city of Dallas, this 13th day of June, eighteen hundred and eighty-one, and of the Independence of the United States of America the 105th year.

(Signed) A. J. HOUSTON,
Clerk U. S. Circuit Court, Northern District of Texas, at Dallas.

104 The defendant Georgia Shannon is required to enter her appearance in the above suit in clerk's office on or before the first Monday of August next; otherwise the bill will be taken as confessed.

(Signed) A. J. HOUSTON, *Clerk.*

Endorsed: No. 22. Circuit court. Chancery. Ida Underwood *et als. vs.* H. J. Dugan *et als.* Subpœna. Issued June 13th, 1881. Returnable August rules, 1881. Houston, clerk. Returned and filed 13th day of July, A. D. 1881. A. J. Houston, clerk.

This subpœna came to hand July 7th, 1881, and executed near Sherman, July 12th, 1881, by delivering to Georgie Shannon in person a true copy of this subpœna.

(Signed) A. B. NORTON,
U. S. Marshal, Northern Dist. of Tex.

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UNITED STATES OF AMERICA:

Circuit Court, Fifth Circuit and Northern District of Texas.

The President of the United States of America to Daniel D. Dugan, Greeting:

You are hereby commanded to appear personally before the honorable circuit court of the United States for the northern district of Texas, in the fifth circuit, at a court to be holden at the city of Dallas, in and for said circuit, on the first Monday, it being the 5th day, of December next, or whensoever the said
105 court shall be there, to answer a bill exhibited against you, Daniel D. Dugan, William P. Dugan, Harriet J. Dugan, Georgia Shannon and her husband, William P. Shannon; Mollie J. Dugan, George H. Dugan, Sarah E. March, John A. March, George March, Webster March, Wilburn March, Murphy March, Carrie March, Maud March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, B. F. Lutterell, H. C. Lutterell, William Tucker, James Holt, J. D. Parnell, W. G. Salmon, Lottie Salmon, and A. M. Robbins, by Ida Underwood, Josey Underwood, Warner Underwood, and James H. R. Cundiff, and to do further and receive what the court shall have considered in that behalf; and this that you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court
L. S. of United States for the northern district of Texas, at the city of Dallas, this 13th day of June, eighteen hundred and eighty-one, and of the Independence of the United States of America the 105th year.

(Signed) A. J. HOUSTON,
Clerk U. S. Circuit Court, Northern District of Texas, at Dallas.

The defendant Daniel D. Dugan is required to enter his appearance in the above suit in the clerk's office on or before the
106 first Monday of August next; otherwise the bill will be taken as confessed.

(Signed) A. J. HOUSTON, *Clerk.*

Endorsed: No. 22. U. S. circuit court. Chancery. Ida Underwood *et als. vs.* H. J. Dugan *et als.* Subpœna. Issued June 13th, 1881. Returnable August rules, 1881. Houston, clerk. Returned and filed 13th day of July, 1881. A. J. Houston, clerk.

This subpœna came to hand July 7th, 1881, and executed July 12, 1881, at Sherman, Grayson Co., Tex., a true copy of this subpœna to Daniel *Daniel* D. Dugan in person.

(Signed) A. B. NORTON,
U. S. Marshal, Northern Dist. of Texas,
By THOS. M. WRIGHT, *Dept.*

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UNITED STATES OF AMERICA:

Circuit Court, Fifth Circuit and Northern District of Texas.

The President of the United States of America to William M. Shannon, Greeting:

You are hereby commanded to appear personally before the honorable circuit court of the United States for the northern district of Texas, in the fifth circuit, at a court to be holden at the city of Dallas, in and for said circuit, on the first Monday, it being the 5th day, of December next, or whensoever the said court shall be there, to answer a bill exhibited against you, William M. Shannon, Harriet J. Dugan, William P. Dugan, Daniel D. Dugan, Georgia Shan-
107 non, Mollie J. Dugan, George H. Dugan, Sarah E. March, John A. March, George March, Webster March, Wilburn March, Murphy March, Carrie March, Maud March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, B. F. Lutterell, H. C. Lutterell, William Tucker, James Holt, J. D. Parnell, W. G. Salmon, Lottie Salmon, and A. M. Robbins, by Ida Underwood; Josey Underwood, Warner Underwood, and James H. R. Cundiff, and to do further and receive what the said court shall have considered in that behalf; and this that you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the northern district of Texas,
L. S. at the city of Dallas, this 13th day of June, eighteen hundred and eighty-one, and of the Independence of the United States of America the 105th year.

(Signed) A. J. HOUSTON,
Clerk U. S. Circuit Court, Northern District of Texas, at Dallas.

The defendant William M. Shannon is required to enter his ap-

pearance in the above suit in the clerk's office on or before the first Monday of August next; otherwise the bill will be taken as confessed.

(Signed) A. J. HOUSTON, *Clerk.*

108 Endorsed: No. 22. U. S. circuit court. Chancery. Ida Underwood *et als. vs.* H. J. Dugan *et als.* Subpœna. Issued June 13, 1881. Returnable August rules, 1881. Houston, clerk. Returned and filed 13th day of July, A. D. 1881. A. J. Houston, clerk.

This subpœna came to hand July *July* 7th, 1881, and executed near Sherman, Grayson county, July 12th, '81, by delivering to William M. Shannon in person a true copy of this subpœna.

(Signed) A. B. NORTON,
U. S. Marshal, Nor. Dist. of Texas,
By THOS. M. WRIGHT, *Dept.*

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UNITED STATES OF AMERICA:

Circuit Court, Fifth Circuit and Northern District of Texas.

The President of the United States of America to Lottie Salmon, Greeting:

You are hereby commanded to appear personally before the honorable circuit court of the United States for the northern district of Texas, in the fifth circuit, at a court to be holden at the city of Dallas, in and for said circuit, on the first Monday, it being on the 5th, day, of December next, or whensoever the said court shall be there, to answer a bill exhibited against you, Lottie Salmon, Harriet J. Dugan, William P. Dugan, Daniel D. Dugan, Georgia Shannon and William M. Shannon, her husband, and Mollie J. Dugan, George H. Dugan,
Sarah E. March, Wilburn March, Murphy March, Carrie
109 March, Maud March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, B. F. Lutterell, H. C. Lutterell, William Tucker, James Holt, J. D. Parnell, W. G. Salmon, and A. M. Robbins, by Ida Underwood; Josey Underwood, Warner Underwood, and James H. R. Cundiff, and to do further and receive what the said court shall have considered in that behalf; and this that you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit
L. S. court of the United States for the northern district of Texas, at the city of Dallas, this 13th day of June, eighteen hundred and eighty-one, and of the Independence of the United States of America the 105th year.

(Signed) A. J. HOUSTON,
Clerk U. S. Circuit Court, Northern District of Texas, at Dallas.

The defendant Lottie Salmon is required to enter her appearance in the above suit in the clerk's office on or before the first Monday of August next; otherwise the bill will be taken as confessed.

(Signed) A. J. HOUSTON, *Clerk.*

Endorsed: No. 22. U. S. circuit court. Chancery. Ida Underwood *et als. vs.* H. J. Dugan *et als.* Subpœna. Issued June 13th, 1881. Returnable August rules, 1881. Houston, clerk.
110 Returned and filed 13th day of July, A. D. 1881. A. J. Houston, clerk.

This subpœna came to hand July 5th, 1881, and executed near Burlington, Montague, July 8th, 1881, by delivering in person a true copy of this subpœna to the within-named Lottie Salmon.

(Signed) A. B. NORTON,
U. S. Marshal, N. Dist. Texas,
By THOS. M. WRIGHT, *Dept.*

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UNITED STATES OF AMERICA:

Circuit Court, Fifth Circuit and Northern District of Texas.

The President of the United States of America to Andrew Tucker, Greeting:

You are hereby commanded to appear personally before the honorable circuit court of the United States for the northern district of Texas, in the fifth circuit, at a court to be holden at the city of Dallas, in and for said circuit, on the first Monday, it being the 5th day, of December next, or whensoever the said court shall be there, to answer a bill exhibited against you, Andrew Tucker, Harriet J. Dugan, William P. Dugan, Daniel D. Dugan, Georgia Shannon and her husband, William M. Shannon, and Mollie J. Dugan, George H. Dugan, Sarah E. March, John A. March, George March, Webster March, Wilburn March, Andrew Smith, Daniel Cable, David
111 Musick, B. F. Lutterell, H. C. Lutterell, William Tucker, James Holt, J. D. Parnell, W. G. Salmon, Lottie Salmon, and A. M. Robbins, by Ida Underwood; Josey Underwood, Warner Underwood, and James H. R. Cundiff, and to do further and receive what the said court shall have considered in that behalf; and this that you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court
L. S. of the United States for the northern district of Texas, at the city of Dallas, this 13th day of June, eighteen hundred and eighty-one, and of the Independence of the United States of America the 105th year.

(Signed) A. J. HOUSTON,
Clerk U. S. Circuit Court, Northern District of Texas, at Dallas.

The defendant Andrew Tucker is required to enter his appearance in the above suit in the clerk's office on or before the first Monday of August next; otherwise the bill will be taken as confessed.

(Signed) A. J. HOUSTON, *Clerk.*

Endorsed: No. 22. U. S. circuit court. Chancery. Ida Underwood *et als. vs.* H. J. Dugan *et als.* Subpœna. Issued June 13th, 1881. Returnable August rules, 1881. Houston, clerk. Returned and filed 13th day of July, A. D. 1881. A. J. Houston, clerk.

112 This subpœna came to hand July 5, 1881, and executed July 8th, 1881, near Burlington, Montague county, by delivering to Andrew Tucker in person a true copy of this subpœna.

(Signed) A. B. NORTON,
U. S. Marshal, Nor. Dist. of Texas,
By THOS. M. WRIGHT, *Dept.*

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UNITED STATES OF AMERICA:

Circuit Court, Fifth Circuit and Northern District of Texas.

The President of the United States of America to Andrew Smith, Greeting:

You are hereby commanded to appear personally before the honorable circuit court of the United States for the northern district of Texas, in the fifth circuit, at a court to be holden at the city of Dallas, in and for said circuit, on the first Monday, it being the 5th day, of December next, or whensoever the said court shall be there, to answer a bill exhibited against you, Andrew Smith, Harriet J. Dugan, William P. Dugan, Daniel D. Dugan, Georgia Shannon and her husband, William M. Shannon, and Mollie J. Dugan, George H. Dugan, Sarah E. March, John A. March, George March, Webster March, Wilburn March, Murphy March, Carrie March, Maud March, Daniel Cable, Andrew Tucker, David Musick, B. F. Lutterell, H. C. Lutterell, William Tucker, James Holt, J. D. Parnell, W. G. Salmon, Lottie Salmon, A. M. Robbin, by Ida Underwood; Josey Underwood, Warner Underwood, and James H. R. Cundiff, and to do further and receive what
113 the said court shall have considered in that behalf; and this that you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the northern district of Texas, at
L. S. the city of Dallas, this 13th day of June, eighteen hundred and eighty-one, and of the Independence of the United States of America the 105th year.

(Signed) A. J. HOUSTON,
Clerk U. S. Circuit Court, Northern District of Texas, at Dallas.

The defendant Andrew Smith is required to enter his appearance in the above suit in the clerk's office on or before the first Monday of August next; otherwise the bill will be taken as confessed.

(Signed) A. J. HOUSTON, *Clerk.*

Endorsed: No. 22. U. S. circuit court. Chancery. Ida Underwood *et al's. vs.* H. J. Dugan *et als.* Subpœna. Issued June 13th, 1881. Returnable August rules, 1881. Houston, clerk. Returned and filed 13th day of July, A. D. 1831. A. J. Houston, clerk.

This subpœna came to hand July 5th, 1881, and executed July 8th, 1881, near Burlington, Montague county, a true copy of
114 this subpœna in person to the within-named Andrew Smith.

(Signed) A. B. NORTON,
U. S. Marshal, N. Dist. of Texas,
By THOS. M. WRIGHT, *Dept.*

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UNITED STATES OF AMERICA:

Circuit Court, Fifth Circuit and Northern District of Texas.

The President of the United States of America to H. C. Lutterell, Greeting:

You are hereby commanded to appear personally before the honorable circuit court of the United States for the northern district of Texas, in the fifth circuit, at a court to be holden at the city of Dallas, in and for said circuit, on the first Monday, it being the 5th day, of December next, or whensoever the said court shall be there, to answer a bill exhibited against you, H. C. Luttrell, Harriet J. Dugan, William P. Dugan, Daniel D. Dugan, Georgia Shannon and her husband, William M. Shannon, and Mollie J. Dugan, George H. Dugan, Sarah E. March, John A. March, George March, Webster March, Wilburn March, Murphy March, Carrie March, Maud March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, B. F. Lutterell, William Tucker, James Holt, J. D. Parnell, W. G. Salmon, Lottie Salmon, and A. M. Robbins, by Ida Underwood; Josey Underwood, Warner Underwood, and James H. R. Cundiff, and to do further and receive what the said court shall have considered in that behalf; and this that you are not to omit under the penalty of two hundred and fifty dollars.

115 Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the
L. S. circuit court of the United States for the northern district of Texas, at the city of Dallas, this 13th day of June, eighteen hundred and eighty-one, and of the Independence of the United States of America the 105th year.

(Signed) A. J. HOUSTON,
Clerk U. S. Circuit Court, Northern District of Texas, at Dallas.

The defendant H. C. Lutterell is required to enter his appearance in the above suit in the clerk's office on or before the first

Monday of August next; otherwise the bill will be taken as confessed.

(Signed) A. J. HOUSTON, *Clerk.*

Endorsed: No. 22. U. S. circuit court. Chancery. Ida Underwood *et als. vs.* H. J. Dugan *et als.* Subpœna. Issued June 13th, 1881. Returnable August rules, 1881. Houston, clerk. Returned and filed 13th day of July, A. D. 1881. A. J. Houston, clerk.

This subpœna came to hand July 5th, 1881, and executed July 8th, 1881, by delivering in person to the within-named H. C. Dutterell a copy of the same near Burlington, Montague county, Texas.

(Signed) A. B. NORTON,
U. S. Marshal, N. Dist., Texas,
By THOS. M. WRIGHT, *Dep-ty.*

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UNITED STATES OF AMERICA.

Circuit Court, Fifth Circuit and Northern District of Texas.

116 The President of the United States of America to James Holt, Greeting:

You are hereby commanded to appear personally before the honorable circuit court of the United States for the northern district of Texas, in the fifth circuit, at a court to be holden at the city of Dallas, in and for said circuit, on the first Monday, it being the 5th day, of December next, or whensoever the said court shall be there, to answer a bill exhibited against you, James Holt, Harriet J. Dugan, William P. Dugan, Daniel D. Dugan, Georgia Shannon and her husband, William M. Shannon, and Mollie J. Dugan, George H. Dugan, Sarah E. March, John A. March, George March, Webster March, Wilburn March, Murphy March, Carrie March, Maud March, Andrew Smith, Daniel Cable, and Andrew Tucker, David Musick, B. F. Lutterell, H. C. Lutterell, William Tucker, J. D. Parnell, W. G. Salmon, Lottie Salmon, A. M. Robbins, by Ida Underwood, Josey Underwood, Warner Underwood, and James H. R. Cundiff, and to do further and receive what the said court shall have considered in that behalf; and this that you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States for the northern district of Texas, at the city of Dallas, the 13th day of June, eighteen hundred and eighty-one, and of the Independence of the United States of America the 105th year.

L. S.

(Signed) A. J. HOUSTON,
117 *Clerk U. S. Circuit Court, Northern District of Texas, at Dallas.*

The defendant James Holt is required to enter his appearance in the above suit in the clerk's office on or before the first Monday of August next; otherwise the bill will be taken as confessed.

(Signed) A. J. HOUSTON, *Clerk.*

Endorsed: No. 22. U. S. circuit court. Chancery. Ida Underwood *et als. vs.* H. J. Dugan *et als.* Subpœna. Issued June 13th, 1881. Returnable August rules, 1881. Houston, clerk. Returned and filed 13th day of July, A. D. 1881. A. J. Houston, clerk.

This subpœna came to hand July 5th, 1881, and executed July 8th, 1881, near Burlington, Montague county, by delivering to James Holt in person a true copy of this subpœna.

(Signed) A. B. NORTON,
U. S. Marshal, N. Dist. Tex.,
By THOS. M. WRIGHT, *Dept.*

* * * * * * *

In U. S. Circuit Court, Northern District Texas, at Dallas.

JULY 1, 1881.

IRA UNDERWOOD *et al.*
vs.
H. J. DUGAN *et al.* } In Chancery.

And now comes complainants in the above case, and representing to the court that defendants Sarah E. March, John A. March,
118 George March, a minor; Webster March, a minor; Wilburn March, a minor; Murphy March, a minor; Carrie March, a minor, and Maud March, a minor, are residents of the county of Rusk, in the State of Texas, and that defendant A. M. Robbins is a resident of the county of Guadalupe, in said State, and all of said defendants are non-residents of the northern district of Texas and are not to be found in said district, and have not voluntarily appeared to complainants' bill, but have failed to so appear, move the court for an order against said defendants requiring them to appear to said bill on or before the first Monday in September next and plead, answer, or demur to said bill on or before the first Monday in October, 1881.

(Signed) MABRY AND CARTER,
WELLBORN, LEAKE & HENRY,
Solicitors for Compl'ts.

Endorsed: No. 22. C. c't. Chancery. Ira Underwood *et al. vs.* H. J. Dugan *et al.* Motion for order to serve non-resident def'ts with notice of suit. Filed July 6, 1881. A. J. Houston, clerk.

* * * * * * *

MONDAY, *August 1st, A. D.* 1881.

I. UNDERWOOD *et al.*
vs.
H. J. DUGAN *et al.* } No. 22.

On this day came the following-named defendants in the above-entitled cause, to wit: Geo. H. Dugan, D. D. Dugan, H. J. Dugan,

W. S. Dugan, Mollie J. Dugan, Wm. M. Shannon, and Geo.
119 Shannon, by their solicitors, Messrs. Hare & Head and Eblen and Robertson, and enter their appearance to the bill of complaint filed herein.

* * * * * * *

UNITED STATES OF AMERICA:

Circuit Court, Fifth Circuit and Northern District of Texas.

The President of the United States of America to W. G. Salmon, Greeting:

You are hereby commanded to personally appear before the honorable circuit court of the United States for the northern district of Texas, in the fifth circuit, at a court to be holden at the city of Dallas, in and for said circuit, on the first Monday, it being the 5th day, of December next, or whensoever the said court shall be there, to answer a bill exhibited against you, W. G. Salmon, Harriet J. Dugan, William P. Dugan, Daniel D. Dugan, Georgia Shannon and William M. Shannon, her husband; Mollie J. Dugan, George H. Dugan, Sarah E. March, John A. March, George March, Webster March, Wilburn March, Carrie March, Maude March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, B. F. Lutterell, H. C. Lutterell, William Tucker, James Holt, J. D. Parnell, Lottie Salmon, and A. M. Robbins, by Ida Underwood, Josey Underwood, Warner Underwood, and James H. R. Cundiff, and to do further and receive what the said court shall have considered in that behalf; and this that you are not to omit under the penalty of two hundred and fifty dollars.

120 Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the northern dis-
L. S. trict of Texas, at the city of Dallas, this 3rd day of August, eighteen hundred and eighty-one, and of the Independence of the United States of America the 106th year.

(Signed) A. J. HOUSTON,
Clerk U. S. Circuit Court, Northern District of Texas, at Dallas.

The defendant W. G. Salmon is required to enter his appearance in the above suit in the clerk's office on or before the first Monday of September next; otherwise the bill will be taken as confessed.

(Signed) A. J. HOUSTON, *Clerk.*

Endorsed: No. 22. U. S. circuit court. Chancery. Ida Underwood *et al. vs.* H. J. Dugan *et al.* Subpœna. Issued August 3rd, 1881. Returnable September rules, 1881. Houston, clerk. Returned and filed 5th day of Dec., A. D. 1881. A. J. Houston, clerk.

Not executed by order of plaintiffs' attorneys.

(Signed) A. B. NORTON,
U. S. Marshal,
By ROB'T CLARKE, *Deputy.*

* * * * * * *

In U. S. Dist. Court for Northern Dist. of Texas, at Dallas.

IDA UNDERWOOD *et al.*
vs.
H. J. DUGAN *et al.*

121 To Hon. A. P. McCormick, United States district judge for the northern district of Texas:

The def'ts in the above numbered and entitled cause respectfully allege that this suit involves the title to a league of land in Montague county, Texas, in the name of Finess Roberson and patented to S. M. March, as ass'ee of said Roberson, on 8th day of August, 1855, patent No. 228, vol. 12; that the following transfer is a link in def'ts' chain of title to said land: Transfer from said Finess Roberson, the grantee of the certificate, by virtue of which said land was patented to Dennis Trammel, dated May 12, 1855, attested by J. H. Bradshaw and David Trammel, proved up for registration July 3d, 1855, by said David Trammel before David Foran, judge of the county court of Sevier county, Arkansas, and filed in the general land office of Texas, with said certificates and the field-notes of said survey, some time prior to the issuance of said patent, and that said transfer is now in said office among the papers and files pertaining to said title and is an archive of said office, but that the pl'*fts* in this cause dispute the validity and genuineness of said transfer and there is a question as to the genuineness of said transfer in this suit, and it is necessary for the def'ts to withdraw the same from said land office in order to prove and establish the same by the testimony of witnesses; wherefore the def'ts pray for an order directing the commissioner of the general land office, requiring and authorizing
122 him, to deliver said transfer to def'ts or their attorneys.

(Signed) EBLIN AND ROBERTSON,
DAVIS AND GARNETT,
Att'ys for Def'ts.

I, John A. March, one of the defendants in the above numbered and entitled cause, on oath say that the allegations in the foregoing application are true.

(Signed) JNO. A. MARCH.

Sworn to and subscribed before me this the 9th day of August, A. D. 1881. To certify which I hereto set my hand and affix the seal of my office, at office, in Gainesville, Tex., this the day and year above written.

[L. S.] (Signed) A. EDDLEMAN,
Notary Public.

Endorsed: No. 22. C. C. Chancery. Ida Underwood *et al. vs.* H. J. Dugan *et al.*. Application to withdraw transfer. Notice waived and consent for application to be presented at once. Aug. 17, '81. (Signed) Wellborn, Leake & Henry, solicitors for pl'ffs. Filed Aug. 30, 1881. A. J. Houston, clerk.

* * * * * * *

TUESDAY, *August* 30, 1881.

IDA UNDERWOOD *et al.*
vs.
H. J. DUGAN *et al.*
} No. 22.

On this day came on to be heard the application of the defendants in the above cause, and, the same being heard, it is hereby
123 ordered and directed that the commissioner of the general land office of the State of Texas deliver to solicitors for defendants, Messrs. Davis and Garnett or Messrs. Eblen and Roberson, the original transfer from Finess Robertson to Dennis Trammel, dated May 12, 1855, attested by J. H. Bradshaw and David Trammel & proved up by the latter before David Foran, judge of the county court of Sevier county, Arkansas, said transfer being of certificate to said Finess Roberson, on which was patented a league of land in Montague county to S. W. March, Aug. 8, 1855, patent No. 228, vol. 12, and that a certified copy of this order be furnished said solicitors.

* * * * * * *

[Endorsed :] In chancery. Ida Underwood and others, complainants, against H. J. Dugan & others, defendants. In the circuit court of the United States for the northern district of Texas, at Dallas.

The defendants, Harriett J. Dugan, Wm. J. Dugan, Daniel D. Dugan, Georgia Shannon, Wm. M. Shannon, Geo. H. Dugan, Sarah E. March, John A. March, Andrew Smith, Daniel Cobb, Andrew Tucker, Mollie Humphries & her husband, D. W. Humphries; Daniel Musick, B. F. Lutterell, H. C. Lutterell, Wm. Tucker, James Holt, W. G. Salmon, Lutie D. McMullin and S. R. McMullin, in their own right, and George March, Webster March, Wm. March, Murphy March, Carrie March, Maud March, and Lottie Salmon, by Sawnie Robertson, their guardian *ad litem*, by protestation, not
124 confessing or acknowledging all or any of the matters or things in the original bill of complainants herein to be true in such manner and form as the same are therein and thereby set forth and alleged, do demur in law to said bill, and for cause of demurrer show that the said complainant-, by their said bill, have not made such a case as entitles them in a court of equity to any relief against said defendants or any of them as to the matters contained in such bill or any of such matters. Wherefore the said defendants do demur to said bill and they pray the judgment of this hon. court whether they or either of them shall be compelled to make any further or other answer to the said bill, and they humbly pray to be herein discharged with their reasonable costs in this behalf sustained; and for further cause of demurrer to said bill the said defendants show:

1st. That said bill is brought up on a cause of action therein appearing to have accrued at or before the 8 day of August, 1855, and thereupon barred by the statutes of three, five, and ten years' limitation, and in equity stale.

2nd. That so much of said bill as pertains to the pretended deed from Phyness Y. Robinson to Joshua Robbins is irrelevant to any matter in controversy, is stated argumentatively, and is vague and conjectural.

3d. That so much of said bill as pertains to the pretended
125 letter from James Jeffries to Warner L. Underwood is irrelevant, scandalous, and can be proven, if admissable at all, only by inadmissable testimony.

4th. It appears upon the face of said bill that complainants cause of action before the location of the certificate claimed was barred by the statute of limitations of two years.

Wherefore and for divers other good causes of demurrer appearing in the said bill these defendants do demur thereto, and they pray the judgment of this honorable court whether they or either of them shall be compelled to make any further or other answer to the said bill, and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

(Signed) HARE AND HEAD,
DAVIS AND GARNETT, AND
EBLEN AND ROBERTSON,
Solicitors for the Defendants Named.

I hereby certify that in my opinion the foregoing demurrers are well founded in point of law.

(Signed) SAWNIE ROBERTSON,
Solicitor for Defendants.

D. D. Dugan, one of the defendants in this cause, upon oath states that the foregoing demurrers are not interposed for a delay.

(Signed) D. D. DUGAN.

Sworn to and subscribed before me this September 27th, 1881.

(Signed) J. H. DILLS,
[L. S.] *Notary Public in and for Grayson Co., Texas.*

The said defendants, reserving to themselves all right of exception to the said bill of complaint, for answer thereto say that they are not advised otherwise than by the said bill that Phiness
126 Y. Robinson was a resident citizen of the Republic of Texas in the year 1838, or that he was a married man, or that he had been such and so residing from the — day of January, 1835, or that as such he was entitled as averred in said bill; neither are said defendants advised otherwise than by the said bill where the said Robinson resided, or that he ever made the application & proof stated in said bill, or that he ever received from the board of land commissioners applied to any certificate for a league and labor of land; but these defendants deny that certificate No. 127, issued by the board of land commissioners of Houston county, was ever issued to Phiness Y. Robinson, as alleged in said bill; on the contrary, they aver the fact to be that said certificate for a league and labor of land No. 127 was issued at the date named to Finess

Roberson (or Robertson), who, by residence & condition properly proved, was lawfully entitled to the same, and they deny the charge in said bill that the said grantee of said certificate was or ever was the said Phiness Y. Robinson, or that the name Finess Roberson was an *alias* for said Phiness Y. Robinson, all of which will more fully appear by reference to certified transcript from the general land office of the State of Texas, herewith filed and made part hereof as Exhibit "C;" and the said defendants further deny that on the 5th day of March, 1838, or at any other date the said Phiness Y. Robinson ever sold or assigned or delivered to Warner L. Underwood the said certificate, or that
127 he ever indorsed on said certificate the transfer stated in substance in said bill or any other transfer, or that on said day — at any other time the said Phiness Y. Robinson, pursuant to any recital in any transfer of said certificate or otherwise, for any consideration, either expressed or received, from said Underwood or any one else, made any deed whatever conveying the said certificate or any part thereof or any interest therein to the said Underwood or any one else, with or without reservation, for the use of Joshua Robbins or any one else.

And the said defendants further deny that any such deed was subscribed, proven, or recorded as charged in said bill or copy thereof taken or certified or filed in the gen'l land office of the State of Texas, as charged in said bill, and they further deny the explanation contained in said bill of the recital in said supposed deed; to the contrary of all such allegations, these defendants aver that the pretended assignment and transfer indorsed upon the said certificate No. 127 was made long after the date therein given and was not made by the said Phiness Y. Robinson or the grantee of said certificate or by the authority of either, but was falsely made and forged. If defendants are mistaken in this averment, then they say that by the culpable negligence of said Underwood or by some subsequent arrangement between him and his said assignor, the evidence of the existence & terms of which has long since been lost & obscured by the lapse of time, the said certificate came again
128 into the hands of said grantee, and the said grantee was suffered to hold the said certificate and to deal with the same as his own, and the references and recitals in the said pretended deed from the grantee of said certificate to Joshua Robbins surmised and supposed to connect the subject-matter of said deed with the said certificate are and were false and forged; that, if genuine, they were made before the said certificate came into existence, and what their real meaning is has been obscured and lost by the great lapse of time. Defendants further deny that the said certificate was ever located or intended to be located upon the lands described in said Joshua Robbins' deed, and they deny that they or those under whom they claim have ever, by fraud, contrivance, or otherwise, obscured in any way whatsoever the true meaning of the transactions related & referred to in said bill in connection with said pretended transfer of said certificate to Underwood on the said pretended deed to Joshua Robbins. These

defendants, further answering, say that they know nothing whatever of the rights among themselves respectively of the heirs and vendees of said Underwood and Robbins save as averred in said bill, but they deny that either ever had any interest in the said certificate No. 127 or in the land appropriated thereunder, and they again deny that any such deed to the said Underwood as that described in said bill was ever made as charged, or that any search — been made for it, or that its existence or contents is shown by
128½ any contemporaneous facts. Defendants admit that no legitimate proof of the existence of any such deed can be made, but deny that it may be used in evidence or may be considered for any purpose in the absence of proper proof. Defendants, further answering, say that they are not advised otherwise than by said bill where the said Underwood resided in 1838 or to what place he afterward removed or with what intent, or that through any of the causes stated any of the papers of said Underwood were lost or destroyed or interfered with, but they deny the allegation in said bill that said Underwood died in the year 1867, but aver the fact to be, on the contrary, that he was still alive in the year 1871; and your orator further avers that said Underwood was by profession a lawyer, and, in fact, an active and diligent man of business, and they deny that from absence or ill health he ever neglected any interest he may have had in Texas or elsewhere.

These defendants, further answering, deny that the grantee of said certificate by any act or word ever admitted the making of said pretended transfer to the said Underwood, or that he ever, until he sold said certificate to —— Trammell, ceased to assert his right & claim to said certificate as his own property; and defendants deny that the said certificate was ever placed by said Underwood in the hands of J. P. Dumas or any other person for location, &c.,
129 or for any other purpose, and they deny that the said Dumas or any one else, alone or with others, contrived, combined or confederated together to deprive the said Underwood of any of his rights in or in connection with said certificate, or that with any purpose to defraud said Underwood or Robbins or for any other purpose that the said Dumas combined, confederated, or conspired with Dennis Trammell & Squire S. March or either of them or any one else to conceal any transfer indorsed on said certificate or to forge or cause to be forged any quitclaim or other conveyance of said certificate from the said Robinson or any one else to the said Dennis Trammell or any one else, or that either of said parties named ever concealed or caused to be concealed upon said certificate the said pretended indorsed transfer by pasting over the same any kind of paper or other substance or by any other means concealed, attempted to conceal, or caused any one else to conceal by any means whatsoever the said pretended indorsement. On the contrary, these defendants aver the facts to be that at the date of said assignment to said Dennis Trammell, the grantee of said certificate, the said Finess Roberson was in the lawful possession of the same, claiming and appearing to be the lawful and beneficial owner and holder of the same, and the said Trammel, believing him to

be such owner in good faith and without any notice whatsoever, actual or constructive, of the pretended claims of
130 said Underwood or said Robbins, paid to said grantee in money the sum of seven hundred and fifty dollars for said certificate, the full and fair value of the same, and received of and from the said grantee his genuine transfer and assignment of said certificate, and not, as averred in said bill, as mere quitclaim of said grantee's interest in said certificate; that if the said Robbins or Underwood then and theretofore had any valid claim upon or interest in said certificate, which by some transaction, the evidences of which are now lost, had not been cancelled or surrendered by their culpable and gross negligence, they or he had suffered the said grantee to retain or recover possession of said certificate and to reinvest himself to all appearances beyond discovery to the contrary by any diligence with the ownership & title to said certificate, and these defendants are advised that under such circumstances the said Trammell would obtain a valid title to said certificate; and these defendants further aver that said Dennis Trammell, being thus invested by the possession of said certificate and the assignment thereof aforesaid with the apparent, if not the legal, ownership of said certificate, proffered to sell the same to the said S. W. March; that the said S. W. March, before agreeing to take the same, had the title to said certificate passed upon by competent and diligent attorneys familiar
131 with the land laws of Texas and by S. Crosby, the then commissioner of the general land office of the State of Texas, and upon their opinion that said certificate was valid and the title of said Trammel thereto perfect and absolute, and so believing, without any notice whatsoever, actual or constructive, of the claims or pretended claims of said Underwood or Robbins, the said S. W. March, on, to wit, the 23d day of June, 1855, bought from said Trammel the said certificate and paid him in cash money the sum of one thousand dollars, and the said Trammell executed & delivered to the said March his assignment of said certificate, with a covenant warranting the title thereto in the usual terms; and all allegations contained in said bill of notice to said Trammell or to said March at or before the dates of their respective purchases of said certificate and of no or an inadequate consideration being paid by either are each and every of them false in every particular. These defendants admit that after purchasing the said certificate the said S. W. March caused the same to be located upon the land described in said bill and in due course obtained a patent from the State of Texas to the said tract of land in Montague county in the name of him, the said S. W. March; but they deny that said patent was obtained by any imposition or fraud practised upon the commissioner of the general land office or otherwise than fairly and lawfully. These defendants further deny
132 that complainants or any of them have ever searched or caused search to — made for the pretended deed of date March 5, 1838, or that any such deed ever existed or was ever lost or mislaid or fell into unfriendly hands, or that defendants or any of them ever saw or had possession of said deed, or that any legal

evidence, primary or secondary, of the existence or contents of said deed ever existed or can be produced upon the final hearing of this cause; and these defendants further deny that said Warner L. Underwood, from any of the causes stated in said bill, remained in ignorance of the whereabouts & ownership and claims upon said certificate until the year 1860, or that from any of said causes he was ignorant of the fact that upon said certificate the land in controversy had been patented to the said S. W. March; on the contrary, these defendants aver the facts to be that, if in fact interested in said certificate, the said Underwood, who was familiar with the laws & land system of Texas, could easily & would, long before the accrual of any of the rights held by these defendants, have readily discovered the whereabouts of and claims upon said certificate, and these defendants charge that his ignorance thereof & subsequently his ignorance of the fact that upon said certificate the land in controversy had been patented are attributable either to gross neg-

133 ligence or, as these defendants more firmly believe, to the fact that said Underwood knew that he had no interest in or claim upon said certificate whatsoever. These defendants further deny any such letter was ever written by James Jeffries or received by said Warner L. Underwood as that described in said bill, or that any such suit was ever instituted in Grayson county as that described in said bill, or that said Underwood, by any of the causes stated in said bill, was prevented from the commencement of appropriate proceedings to recover his rights, if any he had, but, on the contrary, these defendants aver and charge that during the lifetime of said Underwood and Robbins neither of them ever asserted or claimed in any manner whatsoever any interest in or right to the said certificate or the lands patented in virtue thereof; but since their death, as defendants are advised & believe, one W. H. Cundiff has invented, created, and forged the several pretences upon which this suit is founded; and these defendants, further answering, say that personally they know nothing of the disposition made by said W. L. Underwood of his estate, but they are informed and believe that he disposed by will of all the property of which he believed himself the owner, and that he made no disposition of his supposed interest in the certificate No. 127 or in the land in controversy herein, because he well knew that — had no such interest.

134 Defendants, further answering, say that they know nothing personally of descendants or heirs-at-law of either the said Underwood or Robbins, but they are informed that the relation thereof in the said bill is wholly incorrect; and the said defendants especially charge that at the date of the death of said Underwood the said S. W. March had actual possession of the land not by him conveyed, and the statutes of limitations had already commenced to run.

Defendants further say that they know nothing except as advised by said bill of the conveyances from heirs of said Underwood and Robbins to W. H. Cundiff, but they deny that said W. H. Cundiff, for any real consideration, ever conveyed his interest acquired as aforesaid to the complainant, James H. R. Cundiff, and they

charge that if any such conveyance or conveyances were ever made by said W. H. Cundiff the same was (or were) made in order and to the end that this court might have jurisdiction of this cause, & that by said act a fraud is being practiced upon the jurisdiction of this honorable court.

Defendants deny that only certain portions of the land in controversy have ever been occupied by defendants, but aver the fact to be that the whole of said tract was occupied by S. W. March during his life, except the one thousand and 343 acres conveyed by him, as hereinafter shown, & said thousand & 343 acres was occupied by Geo. Dugan during his life, & since his death by those
135 of defendants claiming under him, & the portion of said tract of land occupied during his life by the said S. W. March has been occupied since his death by those of the defendants who claim under him.

And the said defendants, further answering said bill, say that the said S. W. March, after obtaining in good faith and for a valuable consideration the said certificate No. 127, caused the same to be filed & located upon the land in controversy, caused said land to be surveyed & the said certificate and field-notes to be returned to the gen'l land office of the State of Texas, and obtained of said State of Texas a patent in his own name for the said tract of land, paying therefor all the expenses and fees incident thereto, aggregating about the sum of five hundred dollars, and ever since the issue of said patent the said S. W. March & those of the defendants claiming under him since his death have paid the taxes, State and county, due upon said tract of land except the 1,343 acres thereof conveyed, as hereinafter shown; that the said S. W. March during his life, to wit, in the year 1860, entered upon and took actual possession of the said tract of land (except said 1,343 acres) under the said patent, duly issued & recorded, & from thence to the date of his death had & held the exclusive, adverse, & peaceable possession thereof, claiming the same as his own under the said patent, and since his decease the defendants herein claiming under him have had and held like pos-
136 session, whereby the said defendants have acquired an absolute title to the said tract of land by the statutes of limitation of three, five, & ten years as against all the complainants herein, which said several statutes are here pleaded in bar of complainants' demand.

These defendants, further answering, show that on, to wit, the 17 day of July, 1857, for the consideration of thirteen hundred and forty-three dollars, then paid to him by Wm. Howitt and W. C. Twitty, the said Squire W. March, by his deed of that date, with covenant of special warranty, sold and conveyed to said Wm. Howitt and W. C. Twitty thirteen hundred and forty-three acres of the land in controversy, described as follows, to wit: Beginning at the N. W. cor. of said Finess Roberson survey on the bank of Red River, from which a cottonwood bears S. 10° E. 80 vrs., anothers bears N. 74 W. 14 vrs.; thence S. on the W. line of said survey 4,251 vrs.; thence E. 1,275 vrs.; thence N. 425 vrs. to bank of Red River; thence W. up said Red River with its meanders 1,275 vrs. to the beginning,

containing 960 acres, & the remaining 383 acres begin at the S. W. corner of said league; thence N. on the W. line 1,696 vrs.; thence E. 1,275 vrs.; thence S. 1,696 vrs.; thence W. 1,275 vrs. to the beginning; that at the date of said conveyance the said Wm. Howitt and W. C. Twitty had no notice, actual or constructive, of the claims or pretended claims of Warner L. Underwood or of said Robbins or either of them, and paid in cash in good faith the consideration stated in said deed, which said deed was duly and properly
137 recorded in the records of Montague county on Feb'y 26, 1861.

These defendants further show that on the 5 day of October, 1860, the said Wm. Howith & W. C. Twitty, for a valuable consideration, to wit, the sum of thirteen hundred and forty-three dollars, to them cash in hand paid by G. C. Dugan, sold and conveyed the said 1,343 acres of land above described to the said G. C. Dugan, the said G. C. Dugan at said date having no notice of the pretended claims of Underwood and Robbins or either of them & buying in good faith for the consideration aforesaid paid; that said deed was duly & properly recorded in the records of Montague county on the 26 day of February, 1861; that on the date of said purchase by the said G. C. Dugan he, the said Dugan, entered upon & took actual possession of the said 1,343 acres of land, and during his life held possession of the same peaceably, openly, & adversely, claiming the same as his own, paying all taxes thereon, and after his death the defendants claiming under him entered upon & have since held like possession of said tract of land, paying the taxes thereon, whereby the said defendants have title to the said 1,343 acres. Statutes of limitations of three, five, and ten years here pleaded in bar of complainants' suit. The said deeds from S. W. March to Wm. Howith & W. C. Twitty & from the latter to said G. C. Dugan are herewith filed, marked Exhibits A & B respectively, & made part of this answer.

And the said defendants, further answering, say & show
138 that the said complainants never had any interest in the land in controversy in this suit; that if the averments of their bill respecting a sale by the grantee of said certificate to said Underwood and Robbins are true, the said Underwood & Robbins and through & under them the complainants herein did acquire an interest in & claim to said certificate, which defendants are advised was & is, under the laws of Texas, personal property, and that more than two years next before the said certificate was located upon the land in controversy the same was taken possession of and converted to their own use by those under whom the said S. W. March claimed, but with whose unlawful acts the said March had no connection, and who before the date of said transfer to the said S. W. March had acquired title to said certificate by the statute of limitations of two years; and these defendants further say that the said complainants' right respecting said certificate & the said conversion thereof, if any they ever had, was to recover of the parties converting the same & holding it adversely within two years from the accrual of their cause of action the value of said certificate, and that failing to pur-

sue their remedy they have never had any right or interest whatsoever in the land afterward carved from the public domain by virtue of said certificate & granted to the said S. W. March.

And the said defendants, further answering, show that they are advised and believe and so charge that if the allegations
139 of complainants' bill respecting the assignment of said certificate to Underwood and Robbins were true, then the subsequent purchase thereof by the said S. W. March for a valuable consideration paid, without notice of any adverse right or claim, gave to the said March an equal equity with said prior assignees, and that the subsequent purchase by said March of the legal title gave him & through & under him these defendants the superior right in law & equity.

And the said defendants, further answering, show that the complainants & those from whom they derive their claim have neglected & deferred the bringing of this suit until all the parties witnessing & participating in the ancient transactions out of which their supposed rights arose have departed this life and the great lapse of time has obscured or destroyed all the evidence that might heretofore have established their supposed rights, if they existed, or have disproved them if, as defendants believe, they never properly existed; wherefore defendants say that complainants' demand, if any they have, is stale and in a court of equity ought not to be heard.

And the said defendants, further answering, say that those of them claiming, as heirs and devisees of the said S. W. March, that portion of the land in controversy not conveyed by said March to Hovith & Twitty and those under whom they claim, believing themselves under the patent from the State of Texas to be the real and true
140 owners of said tract of land, have for more than one year next before the commencement of this suit had & held possession of said tract of land in good faith, and in good faith and in the honest belief that they were the true owners of said portion of said tract of land have erected thereon valuable and permanent improvements, to wit:

1 dwelling-house, of present value			$3,000 00
1 barn,	"	"	500 00
1 stable,	"	"	300 00
1 crib,	"	"	300 00
20 tenement-houses,	"	"	2,000 00
20 wells ($50 each),	"	"	1,000 00

And have reduced to a state of fine cultivation & fenced 2,500 acres of said land, of the value in improvement thereof $4.00 per a., = 10,000.00, aggregating the sum of $18,000.00 in value of improvements; that the said tract of land (excluding the portion conveyed by said March as aforesaid) without said improvements is of the value of about $8,000.00, & that with said improvements the same is reasonably & well worth the sum of twenty-six thousand dollars.

The said defendants further show that at the date of locating and patenting said certificate No. 127 the usual fee for locating & patenting the same was one-third the land patented.

The said defendants, further answering, show that those of the defendants claiming as heirs & devisees of G. C. Dugan, deceased, and the said G. C. Dugan, honestly & in good faith believing
141 themselves to be the owners of the said 1,343 acres hereinbefore described, & for more than 12 mos. next before the commencement of this suit having the possession thereof, in good faith erected permanent & valuable improvements thereon, to wit:

5 tenant-houses, of present value of			$300 each	1,500
5 stables,	"	"	100	500
5 wells,	"	"	100	500
Fencing,	"	"		1,500
500 acres of land put in state of cultivation, at 4.00 per a.				2,000
Aggregating the sum of				$6,000

That said tract of land without said improvements is of the reasonable value of twenty-five hundred dollars, and that with said improvements the value thereof is enhanced by the value of said improvements as above shown.

And now the said defendants, denying all and all manner of unlawful combination and confederacy wherewith they or the said S. W. March or the said Trammel or the said Dumas have by the said bill been wrongfully & falsely charged, and also all and every matter contained in said bill not herein specifically answered unto, all of which matters & things in this their said answer contained the said defendants are ready & willing to aver, maintain, & prove as this hon. court may direct, the said defendants humbly pray to be hence dismissed with their reasonable costs & charges in this behalf most wrongfully sustained.

(Signed) DAVIS & GARNETT,
HARE AND HEAD, AND
EBLEN AND ROBERTSON,
142 *Solicitors for Defendants Named.*

Endorsed: No. 22. Cir. court. Chancery. Ida Underwood *et al. vs.* H. J. Dugan *et al.* Demurrer and answer of defendants. Filed Oct. 3, 1881. A. J. Houston, clerk.

* * * * * * *

No. 127.

This is to certify that Finess Roberson has appeared before the board of land commissioners for the county of Houston and proved according to law that he arrived in this Republic Jan'y, eighteen and thirty-five, and that he is a married man and entitled to one league and labor of land upon the condition of paying at the rate of three dollars and fifty cents for each labor of irrigable land, two dollars and fifty cents for each labor of temporal or arable land, and one dollar and twenty cents for each labor of pasture land which may be contained in the survey secured by him by this certificate.

Given under our hands this 1st day of March, 1838.

E. GOSSETT, *President.*
JOHN WORTHAM,
Ass. Comm'r.

Attest: SAMUEL G. WELLS, *Clerk.*

"A."

Know all men by these presents that I, Finess Robertson, of the county of Sevier and State of Arkansas, have this day bargained and sold, and do by these presents bargain and sell and
143 convey, unto Dennis Trammell, of the county of *the county of* Sebastian and State aforesaid, all of my right and title in and to my head-right certificate granted to me in the Republic of Texas as actual settler in the Republic of Texas and issued by the board of land commissioners appointed by the Republic of Texas, the same being for one league and one labor of land, and No. 127, for and in consideration of the sum of seven hundred dollars to me in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged; do by these presents bargain and sell and convey said head-right certificate to him, the said Trammell, and No. 127, to his heirs or assigns forever, the same being issued by the board of land commissioners of the county of Houston, in the Republic of Texas, and No. 127, and for the said Trammell, to have and to hold from me and my heirs forever; and I, the said Robertson, desire said patent to issue in the name of the said Trammell, or in the name of his ass'ee, and I also desire and authorize the commissioner of the general land office to issue the said patent to the said Trammell, which may be located by my said head-right certificate, in as full a manner as I could do were I personally present myself.

Given under my hand and seal this 12 day of May, 1855.

FINES ROBERTSON. [SEAL.]

Test: J. H. BRADSHAW.
DAVID TRAMMELL.

144 STATE OF ARKANSAS, } *sct:*
County of Sevier, }

Be it remembered that on this the 15th day of May, in the year of our Lord one thousand eight hundred and fifty-five, at the county aforesaid, before me, Henry G. Rind, clerk of the circuit court for the county of Sevier, personally came and appeared David Trammell, one of the subscribing witnesses to the foregoing transfer or deed of conveyance from Fines Robertson to Dennis Trammell, to me personally well known *by me* to be of lawful age, who, being by me first duly sworn, on his oath stated that he saw Fines Robertson, maker of the foregoing deed of conveyance, subscribe, seal, and deliver the same on the day on which it bears date for the uses and purposes and considerations therein expressed, and that he and Jacob H. Bradshaw, the other attesting witness, subscribed the same as attest-

ing witnesses at the request of the said Fines Robertson and in the presence of each other.

In testimony whereof I have hereunto set my hand and
L. S. affixed the seal of said court, at office, in the town of Paraclifta, this the 15th May first above written.

H. G. RIND, *Clerk.*

STATE OF ARKANSAS, } *sct:*
County of Sevier, }

I, Henry G. Rind, clerk of the circuit court in and for the county of Sevier, in the State of Arkansas, do hereby certify that
145 Fines Robertson, whose signature appears to the foregoing deed, is personally and officially well known to me, and that I believe that his signature to said deed is genuine from having often seen him write; and I further certify that I believe the signature of David Trammell, one of the subscribing witnesses to said deed, is genuine from having seen him write; and I further certify that I believe the signature of *David Trammell*, one of the subscribing witness- to said deed, is genuine from having seen him write.

In testimony whereof I have hereunto set my hand and
L. S. affixed the seal of said court, at office, in the town of Paraclifta, this the 15th day of May, A. D. 1855.

H. G. RIND, *Clerk.*

STATE OF ARKANSAS, } *sct:*
County of Sevier, }

Be it remembered that on this the 3d day of July, A. D. 1855, personally came before me, Daniel Foran, presiding judge of the county court of Sevier county, State of Arkansas, it being a court of record, having a seal, David Trammel, to me personally well known, one of the witnesses to the foregoing transfer or deed of conveyance from Fines Robertson to Dennis Trammell, and who, being by me first duly sworn, on his oath states that he saw Phineas Robinson, maker of the foregoing deed of conveyance, subscribe, seal, and deliver the same on the day on which it bears date for uses and purposes therein expressed, and that he and Jacob H. Bradshaw,
146 the other attesting witness, subscribed the same as attesting witnesses at the request of the said Finias Robinson and in the presence of each other.

In testimony whereof I have hereunto set my hand and
L. S. caused the seal of said court to be affixed thereto, at Paraclifta, in said county, this 3d day of July, A. D. 1855.

DAVID FORAN,
Presiding Judge, Sevier County Court.

* * * * * * *

"B."

THE STATE OF TEXAS, }
County of Travis. }

Know all men by these presents that I, Dennis Trammell, of the

county of Sebastian and State of Arkansas, for and in consideration of the sum of one thousand dollars to me in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, and convey, unto S. W. March all my right, title, and interest in and to certificate No. 127, issued by the board of land commissioners for the county of Houston to Finesse Robertson on the first day of March, A. D. 1838, for one league and labor; to have and to hold to him, the said Squire W. March, his heirs and assigns forever; and I hereby agree to warrant and forever defend the title to said certificate against the claim or claims of any person or persons lawfully claiming or to claim the same.

147 In testimony whereof I have hereunto set my hand and scrawl for seal this 23d day of June, A. D. 1855.

DENNIS TRAMMELL. [SEAL.]

Attest: W. P. DE NORMANDIE.
JNO. A. GREEN.

THE STATE OF TEXAS, }
County of Travis. }

Personally came before the undersigned, notary in said county, Dennis Trammell, to me known, who did acknowledge to me he had executed the above instrument for all the purposes and considerations therein expressed and contained.

SEAL. Witness my hand and seal of office, at Austin, this 28th day June, 1855.

FRANCIS T. DUFFAN,
Notary Public, Travis Co., Tex.

GENERAL LAND OFFICE, AUSTIN, *November 27th*, 1875.

I, J. J. Groos, commissioner of the general land office, do hereby certify that the foregoing and attached six (6) pages contain correct and true copies of the original certificate No. 127, issued to Finess Robertson, and of the original transfers (with their certificates of authentication and acknowledgment) from Fines Robertson to Dennis Trammell and from Dennis Trammell to S. W. March, all of said original documents being on file in this office.

L. S. In testimony whereof I hereunto set my hand and affix the impress of the seal of said office the date last above written.

148 (Signed) J. J. GROOS,
Commissioner.

THE STATE OF TEXAS, }
County of Montague. }

This is to certify that the above and foregoing and attached instrument of writing was duly filed for record in my office Jan'y 27th, 1876, at 9 o'clock a. m., and recorded the same day in Book "D," record of deeds, &c., of Montague county, on pages 221, 222, 223, 224, 225, & 226.

L. S. Witness my hand & seal of office this Jan'y 27, A. D. 1876.

(Signed) W. A. WILLIAMS,
Cl'k D. C., M. Co., Tex.

Endorsed: Filed for record Jan'y 27, 1876, at 9 o'clock a. m. W. A. Williams, dist. clerk. Filed Oct. 3, 1881. A. J. Houston, clerk.

* * * * * * *

IDA UNDERWOOD *et al.* *vs.* DUGAN *et al.* } No. 22.

MONDAY, *November* 7, 1881.

On this day came Messrs. Wellborn, Leake and Henry, solicitors for complainants herein, and have set down for argument the demurrer filed by defendants on rule day in October, 1881, in this cause.

149 In United States Circuit Court, Northern District Texas, at Dallas.

IDA UNDERWOOD *et al.* *vs.* DUGAN *et al.* } In Chancery.

To the Hon. A. P. McCormick, judge of the United States circuit court for northern district of Texas, at Dallas:

The plaintiffs in this case respectfully represent that by the answer of the defendants filed herein a question is made as to the genuineness of the transfer of the certificate issued to Finess Robinson to Warner L. Underwood endorsed on said certificate, as described in their original bill.

Wherefore plaintiffs pray for an order for the delivery of said certificate and said endorsed transfer to them by the commissioner of the general land office of the State of Texas to enable them to take depositions in regard to the execution and genuineness of said transfer.

(Signed) WELLBORN, LEAKE & HENRY,
A. M. CARTER, *Solicitors for P'ffs.*

Endorsed: No. 22. Cir. court. Chancery. Ida Underwood *et al.* *vs.* H. J. Dugan. Petition for leave to withdraw transfer of certificate and the certificate from the general land office. Filed Dec. 30, 1881. A. J. Houston, clerk.

* * * * * * *

150 In United States Circuit Court, Northern District Texas, at Dallas.

IDA UNDERWOOD
vs.
H. J. DUGAN *et al.* } In Chancery.

The replication of complainants in above case to the answer of defendants.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied to by *this* repliant-; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

(Signed) A. M. CARTER,
WELLBORN, LEAKE & HENRY,
Solicitors for Complainants.

Endorsed: No. 22. Cir. court. Chancery. Ida Underwood *et al. vs.* H. J. Dugan *et al.* Replication. Filed Dec. 30, 1881. A. J. Houston, clerk.

151 I. UNDERWOOD *et al.*
vs.
H. J. DUGAN *et al.* } No. 22.

THURSDAY, *February* 2*d*, 1882.

Upon application of both parties hereto and by consent it is ordered by the court that the time for taking testimony in this cause be, and the same is hereby, enlarged until the first Monday in June next.

* * * * * * *

I. UNDERWOOD *et al.*
vs.
H. J. DUGAN *et al.* } No. 22.

MONDAY, *June* 26*th*, 1882.

This day, upon application, it is ordered by the court that time for taking testimony in this cause be, and the same is hereby, enlarged until the first Monday in December next.

* * * * * * *

IDA UNDERWOOD *et al.*
vs.
H. J. DUGAN *et al.* } No. 22.

MONDAY, *December 4th*, 1882.

Upon application it is ordered by the court that the time for taking testimony herein be, and the same is hereby, extended by consent until the first Monday in June, A. D. 1883.

* * * * * * *

152 IDA UNDERWOOD *et al.*
vs.
H. J. DUGAN *et al.* } No. 22.

MONDAY, *May* 7, 1883.

This day, upon application of complainants, it is ordered that they have leave to file their supplemental bill in this cause.

* * * * * * *

IDA UNDERWOOD *et al.*
vs.
H. J. DUGAN *et al.* } No. 22.

MONDAY, *June* 4, 1883.

Now comes A. M. Robbins, one of the defendants in this cause, and enters his appearance herein. He says he neither confesses nor denies the matters and things in plaintiffs' bill contained.

(Signed) A. M. ROBBINS.

* * * * * * *

In United States Circuit Court, Northern District of Texas, at Dallas.

IDA UNDERWOOD *et al.*
vs.
H. J. DUGAN *et al.* }

We consent for the testimony in the above case to be published, and move the court for an order to that effect.

(Signed) A. M. CARTER,
WELLBORN, LEAKE & HENRY,
Solicitors for Pl'ffs.
SAWNIE ROBERTSON,
Solicitor for Def'ts.

Endorsed: No. 22. Ida Underwood *et al. vs.* H. J. Dugan
153 *et al.* Agreement and motion for order to publish testimony. Filed June 14, 1883. A. J. Houston, clerk.

* * * * * * *

IDA UNDERWOOD *et al.*
vs.
H. J. DUGAN *et al.* } No. 22.

THURSDAY, *June* 14, 1883.

Upon motion and agreement of counsel for both plaintiffs and defendants it is ordered that the testimony taken in this case be published.

* * * * * * *

In U. S. Circuit Court. Chancery.

IDA UNDERWOOD *et al.*
vs.
DUGAN *et al.*

The final interrogatories to the witnesses W. T. Wayborne and 8 others, Jno. Crow, A. M. March, Wm. Howeth, and W. C. Twitty (2 sets), omitted by inadvertence of solicitors for defendants, *is* hereby waived, and the testimony of said witnesses when taken may be read without objection on this ground, waiving no other objection. This April 18, 1882.

(Signed) WELLBORN, LEAKE & HENRY,
Solicitors for Pl'ffs.

Endorsed: No. 22. Underwood *vs.* Dugan. Waiver of final intgs. Filed Nov. 15, 1883. A. J. Houston, clerk.

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154

IDA UNDERWOOD *et al.*
vs.
H. J. DUGAN *et al.* } No. 22.

MONDAY, *December* 3, 1883.

In this case the defendant A. M. Robbins, having heretofore filed his appearance herein on the first Monday in the month of June, A. D. 1883, and not having otherwise appeared or filed a demurrer, plea, or answer herein, therefore, on motion of John L. Henry, solicitor for complainants, it is ordered and decreed that the bill herein be taken *pro confesso* as to said defendants.

* * * * * * *

In United States Circuit Court for Northern District of Texas, at Dallas.

IDA UNDERWOOD *et al.*
vs.
H. J. DUGAN *et al.* } No. 22.

And now come the plaintiffs in the above-styled cause, and, leave of the court for that purpose being first had, amend their original bill herein, and for amendment say that by an oversight and inad-

vertence they omitted from their original bill the name of Lutie D. Dugan as one of the defendants therein; that since the filing of their said original bill the said Lutie D., who was then a *femme sole*, has intermarried with and she is now the wife of J. R. McMullin; that both, said Lutie D. and her husband, the said J. R. McMullin, are citizens of the State of Texas, residing in the county of Tarrant, in said State. Pl'ffs now apply to the said Lutie D. and her said husband, J. R. McMullin, all of the allegations and prayers of
155 their original bill the same as if their names had been written in said original bill as defendants thereto, and allege that they are setting up a claim to an interest in land described in and sued for in said bill in right of the said Lutie D. as a devisee under the last will of her deceased father, George O. Dugan, who held under a deed from William Howeth and W. C. Twitty, who held the same under a deed from the said S. W. March, who held the same under the patent issued by the State of Texas to him under the circumstances set forth in the original bill. Wherefore plaintiffs make the said Lutie D. McMullin and the said J. R. McMullin parties defendant to their original bill, and pray for the same relief against them, special & general, as is therein prayed against the other defendants, and that the pretended titles of all the defendants be decreed to be held in trust for pl'ffs according to their respective interests, &c., and that subpœnas be issued to the said Lutie D. McMullin and the said J. R. McMullin, requiring them to appear and plead, answer, or demur to pl'ffs' original bill and this amendment by a day named; and, as in duty, &c.

(Signed) A. M. CARTER,
LEAKE AND HENRY,
Solicitors for Complainants.

Endorsed: No. 22. Ida Underwood *et al. vs.* H. J. Dugan *et al.* Amended bill. Filed Dec. 7, 1883. A. J. Houston, clerk.

156 UNITED STATES OF AMERICA:

Circuit Court, Fifth Circuit and Northern District of Texas.

The President of the United States of America to Lutie D. McMullin and J. R. McMullin, Greeting:

You are hereby commanded to appear personally before the honorable circuit court of the United States for the northern district of Texas, in the fifth circuit, at a court to be holden at the city of Dallas, in and for said circuit, on the first Monday of January next, or whensoever the said court shall be there, to answer a bill exhibited against you, Harriett J. Dugan, W. P. Dugan, Daniel D. Dugan, Georgia Shannon, William M. Shannon, George H. Dugan, Mollie J. Dugan, Sarah E. March, John A. March, George March, Webster March, Wilborn March, Murphy March, Carrie March, Maud March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, J. D. Parnell, W. G. Salmon, Lutie Salmon, and A. M. Robbins by Ida Underwood, Josey Underwood, Warner Underwood, and James H.

R. Cundiff, and to do further and receive what the said court shall have considered in that behalf; and this that you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circ-
L. S. cuit court of the United States for the northern district of Texas, at the city of Dallas, this 8th day of December, eighteen hundred and eighty-three, and of the Independence of the United States of America the 108th year.

157 (Signed) A. J. HOUSTON,
Clerk U. S. Circuit Court, Northern District of Texas, at Dallas.

The defendant Lutie D. Dugan is required to enter her appearance in the above suit in the clerk's office on or before the first Monday of January next; otherwise the bill will be taken as confessed.

(Signed) A. J. HOUSTON, *Clerk.*

Endorsed: No. 22. U. S. circuit court. In chancery. Ida Underwood *et al. vs.* H. J. Dugan *et al.* Subpœna. Issued Dec. 8th, 1883. Returnable January rules, 1884. Houston, clerk. Returned and filed 31st day of Dec'r, A. D. 1883. A. J. Houston, clerk.

I received this writ on the 14th day of Dec., 1883, and executed it on the 17 day of Dec'r, 1883, by leaving a copy of this writ at defendant's house, in Fort Worth, Tarrant Co., in the hands of W. H. Linge, an adult person, who was in charge of defendant's house during her absence.

(Signed) JAMES A. McKEE,
U. S. Marshal,
By JAMES A. McKEE, Jr., *Deputy.*

* * * * * * *

UNITED STATES OF AMERICA:

Circuit Court, Fifth Circuit and Northern District of Texas.

The President of the United States of America to W. G. Salmon, Greeting:

You are hereby commanded to appear personally before the honorable circuit court of the United States for the northern
158 district of Texas, in the fifth circuit, at a court to be holden at the city of Dallas, in and for said circuit, on the first Monday of January next, or whensoever the said court shall be there, to answer a bill exhibited against you, Harriett J. Dugan, W. P. Dugan, Daniel D. Dugan, Georgia Shannon, William M. Shannon, George H. Dugan, Mollie D. Dugan, Sarah E. March, John A. March, George March, Webster March, Welborn March, Murphy March, Maud March, Carrie March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, B. F. Lutterell, H. C. Lutterell, William Tucker, James Holt, J. D. Parnell, Lottie Salmon, and A. M. Robbins, and J. R. McMullin and Lutie D. McMullin, by Ida Underwood, Josey Un-

derwood, Warner Underwood, and James H. R. Cundiff, and to do further and receive what the said court shall have considered in that behalf; and this that you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the northern district of Texas, at the city of Dallas, this 8th day of December, eighteen hundred and eighty-three, and of the Independence of the United States of America the 108th year.

L. S.

(Signed) A. J. HOUSTON,
Clerk U. S. Circuit Court, Northern District of Texas, at Dallas.

159 The defendant W. G. Salmon is required to enter his appearance in the above suit in the clerk's office on or before the first Monday of January next; otherwise the bill will be taken as confessed.

(Signed) A. J. HOUSTON, *Clerk.*

Endorsed: No. 22. U. S. circuit court. Chancery. Ida Underwood *et al. vs.* H. J. Dugan *et al.* Subpœna. Issued Dec. 8th, 1883. Returnable January rules, 1884. Houston, clerk. Returned and filed 31st day of Dec'r, A. D. 1883. A. J. Houston, clerk.

I received this writ on the 14th day of Dec., 1883, and I executed it on the 17 day of Dec., 1883, by delivering a copy of this writ to Mrs. M. H. Salmon, she being the wife of the defendant in this writ, at Gainesville, Cooke Co.

(Signed) JAMES A. McKEE,
U. S. Marshal,
By JAMES A. McKEE, JR., *Deputy.*

* * * * * * *

UNITED STATES OF AMERICA:

Circuit Court, Fifth Circuit and Northern District of Texas.

The President of the United States of America to George March, Greeting:

You are hereby commanded to appear personally before the honorable circuit court of the United States for the northern district of Texas, in the fifth circuit, at a court to be holden at the city of Dallas, in and for said circuit, on the first Monday of January next, or whensoever the said court shall be there, to answer a bill exhibited against you, Harriett J. Dugan, W. P. Dugan, Daniel P. Dugan,

160 Georgia Shannon, William M. Shannon, George H. Dugan, Mollie J. Dugan, Sarah E. March, John A. March, Webster March, Wilburn March, Murphy March, Carrie March, Maud March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, B. F. Lutterell, H. C. Lutterell, William Tucker, James Holt, J. D. Parnell, W. G. Salmon, Luttie Salmon, and A. M. Robbins and J. R.

McMullin and Lutie D. McMullin, by Ida Underwood, Josie Underwood, Warner Underwood, and James H. R. Cundiff, and to do further and receive what the said court shall have considered in that behalf; and this that you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the northern district of Texas, at the city of Dallas, this 8th day of December, eighteen hundred and eighty-three, and of the Independence of the United States of America the 108th year.

L. S.

(Signed) A. J. HOUSTON,
Clerk U. S. Circuit Court, Northern District of Texas, at Dallas.

The defendant George March is required to enter his appearance in the above suit in the clerk's office on or before the first Monday of January next; otherwise the bill will be taken as confessed.

(Signed) A. J. HOUSTON, *Clerk.*

161 Endorsed: No. 22. U. S. circuit court. Chancery. Ida Underwood *et al. vs.* H. J. Dugan *et al.* Subpœna. Issued Dec. 8th, 1883. Returnable January rules, 1884. Houston, clerk. Returned and filed first day of February, A. D. 1884. A. J. Houston, clerk, by H. P. Purcell, deputy.

Came to hand on the 22d day of December, 1883, and executed on the 29th day of December, 1883, by delivering to George March, in person, in Rusk Co., Tex., a true copy of the within writ.

(Signed) W. J. PHILLIPS,
U. S. Marshal for Eastern Dist. of Texas,
By W. H. FINCH, *Deputy.*

* * * * * * *

UNITED STATES OF AMERICA:

Circuit Court, Fifth Circuit and Northern District of Texas.

The President of the United States of America to Webster March, Greeting:

You are hereby commanded to appear personally before the honorable circuit court of the United States for the northern district of Texas, in the fifth circuit, at a court to be holden at the city of Dallas, in and for said circuit, on the first Monday of January next, or whensoever the said court shall be there, to answer a bill exhibited against you, Harriett S. Dugan, W. P. Dugan, Daniel D. Dugan, Georgia Shannon, William M. Shannon, George H. Dugan, Mollie J. Dugan, Sarah E. March, John A. March, George March, Welborne March,
162 Murphy March, Carrie March, Maud March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, B. F. Lutterell, H. C. Lutterell, William Tucker, James Holt, J. D. Parnell, W. G. Salmon, Lottie Salmon, and A. M. Robbins, and J. R. McMullin

and Lutie D. McMullin, by Ida Underwood, Josie Underwood, Warner Underwood, and James H. R. Cundiff, and to do further and receive what the said court shall have considered in that behalf; and this that you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the northern district of L. S. Texas, at the city of Dallas, this 8th day of December, eighteen hundred and eighty-three, and of the Independence of the United States of America the 108th year.

(Signed) A. J. HOUSTON,
Clerk U. S. Circuit Court, Northern District of Texas, at Dallas.

The defendant Webster March is required to enter his appearance in the above suit in the clerk's office on or before the first Monday of January next; otherwise the bill will be taken as confessed.

(Signed) A. J. HOUSTON, *Clerk.*

Endorsed: No. 22. U. S. circuit court. Chancery. Ida Underwood *et al. vs.* H. J. Dugan *et al.* Subpœna. Issued Dec. 8th, 1883. Returnable January rules, 1884. Houston, clerk. Returned
163 and filed first day of February, 1884. A. J. Houston, clerk.

Came to hand on the 22d day of December, 1883, and executed on the 29th day of December, 1883, by delivering to Webster March in person, in Rusk county, Tex., a true copy of the within writ.

(Signed) W. J. PHILLIPS,
U. S. Marshal for Eastern Dist. of Texas,
By W. H. FINCH, *Deputy.*

* * * * * * *

UNITED STATES OF AMERICA:

Circuit Court, Fifth Circuit and Northern District of Texas.

The President of the United States of America to Murphy March, Greeting:

You are hereby commanded to appear personally before the honorable circuit court of the United States for the northern district of Texas, in the fifth circuit, at a court to be holden at the city of Dallas, in and for said circuit, on the first Monday of January next, or whensoever the said court shall be there, to answer a bill exhibited against you, Harriett J. Dugan, W. P. Dugan, Daniel D. Dugan, Georgia Shannon, William M. Shannon, George H. Dugan, Mollie J. Dugan, Sarah E. March, John A. March, George March, Webster March, Wilburn March, Carrie March, Maud March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, B. F. Lutterell, H. C. Lutterell, William Tucker, James Holt, J. D. Parnell, W. G. Salmon, Lottie Salmon, and A. M. Robbins and J. R. McMullin and Lutie D. McMullin, by Ida Underwood, Josie Underwood, Warner Under-

wood, and James H. R. Cundiff, and to do further and receive
164 what the said court shall have considered in that behalf; and this that you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the northern district of Texas, at the city of Dallas, this 8th day of December (1883), eighteen hundred and eighty-three, and of the Independence of the United States of America the 108th year.

L. S.

(Signed) A. J. HOUSTON,
Clerk U. S. Circuit Court, Northern District of Texas, at Dallas.

The defendant Murphy March is required to enter his appearance in the above suit in the clerk's office on or before the first Monday of January next; otherwise the bill will be taken as confessed.

(Signed) A. J. HOUSTON, *Clerk.*

Endorsed: No. 22. U. S. circuit court. Chancery. Ida Underwood *et al. vs.* H. J. Dugan *et al.* Subpœna. Issued Dec. 8th, 1883. Returnable January rules, 1884. Houston, clerk. Returned and filed first day of February, A. D. 1884. A. J. Houston, clerk.

Came to hand on the 22d day of December, 1883, and executed on the 29th day of December, 1883, by delivering to Murphy March in person, in Rusk county, Texas, a true copy of the within writ.

(Signed) W. J. PHILLIPS,
165 *U. S. Marshal for the Eastern Dist. of Texas,*
By W. H. FINCH, *Deputy.*

* * * * * * *

UNITED STATES OF AMERICA:

Circuit Court, Fifth — and Northern District of Texas.

The President of the United States of America to Maud March, Greeting:

You are hereby commanded to appear personally before the honorable circuit court of the United States for the northern district of Texas, in the fifth circuit, at a court to be holden at the city of Dallas, in and for said circuit, on the first Monday of January next, or whensoever the said court shall be there, to answer a bill exhibited against you, Harriett J. Dugan, W. P. Dugan, Daniel D. Dugan, Georgia Shannon, William M. Shannon, George H. Dugan, Mollie J. Dugan, Sarah E. March, John A. March, George March, Webster March, Wilburn March, Murphy March, Carrie March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, B. T. Lutterell, H. C. Lutterell, William Tucker, James Holt, J. D. Parnell, W. G. Salmon, Lutie Salmon, and A. M. Robbins and J. R. McMullin and Lutie D. McMullin, by Ida Underwood, Josie Underwood, Warner Underwood, and James H. R. Cundiff, and to do

further and receive what the said court shall have considered in that behalf; and this that you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of
166 the Supreme Court of the United States, and the seal of the circuit court of the United States for the northern district of
L. S. Texas, at the city of Dallas, this 8th day of December, eighteen hundred and eighty-three, and of the Independence of the United States of America the 108th year.

(Signed) A. J. HOUSTON,
Clerk U. S. Circuit Court, Northern District of Texas, at Dallas.

The defendant Maud March is required to enter her appearance in the above suit in the clerk's office on or before the first Monday of January next; otherwise the bill will be taken as confessed.

(Signed) A. J. HOUSTON, *Clerk.*

Endorsed: No. 22. U. S. circuit court. Chancery. Ida Underwood *et al. vs.* H. J. Dugan *et al.* Subpœna. Issued Dec. 8th, 1883. Returnable January rules, 1884. Houston, clerk. Returned and filed first day of February, A. D. 1884. A. J. Houston, clerk, by H. P. Purcell, deputy.

Came to hand on the 22d day of December, 1883, and executed on the 29th day of December, 1883, by delivering to Maud March in person a true copy of the within writ.

(Signed) W. J. PHILLIPS,
U. S. Marshal for Eastern Dist. of Texas,
By W. H. FINCH, *Deputy.*

* * * * * * *

167 UNITED STATES OF AMERICA:

Circuit Court, Fifth Circuit and Northern District of Texas.

The President of the United States of America to Welborn March, Greeting:

You are hereby commanded to appear personally before the honorable circuit court of the United States for the northern district of Texas, in the fifth circuit, at a court to be holden at the city of Dallas, in and for said circuit, on the first Monday of January next, or whensoever the said court shall be there, to answer a bill exhibited against you, Harriett J. Dugan, W. P. Dugan, Daniel D. Dugan, Georgia Shannon, William M. Shannon, George H. Dugan, Mollie J. Dugan, Sarah E. March, John A. March, George March, Webster March, Welborn March, Murphy March, Carrie March, Maud March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, B. F. Lutterell, H. C. Lutterell, William Tucker, James Holt, J. D. Parnell W. G. Salmon, Lutie Salmon, A. M. Robbins, and J. R. McMullin and Lutie D. McMullin, by Ida Underwood, Josie Underwood, Warner Underwood, and J. H. R. Cundiff, and to do further and receive

what the said court shall have considered in that behalf; and this that you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the northern district of Texas, at the city of Dallas, this 8th day of December, eighteen hundred and eighty-three, and of the Independence of the United States of America the 108th year.

L. S.

168

(Signed) A. J. HOUSTON,
Clerk U. S. Circuit Court, Northern District of Texas, at Dallas.

The defendant Welborne March is required to enter his appearance in the above suit in the clerk's office on or before the first Monday of January next; otherwise the bill will be taken as confessed.

(Signed) A. J. HOUSTON, *Clerk.*

Endorsed: No. 22. U. S. circuit court. Chancery. Ida Underwood *et al. vs.* H. J. Dugan *et al.* Subpœna. Issued Dec. 8, 1883. Returnable January rules, 1884. Houston, clerk. Returned and filed first day of February, A. D. 1884. A. J. Houston, clerk, by H. P. Purcell, deputy.

Came to hand on the 22d day of December, 1883, and executed on the 29th day of December, 1883, by delivering to Wellborne March in person, in Rusk county, Texas, a true copy of the within writ.

(Signed) W. J. PHILLIPS,
U. S. Marshal for Eastern Dist. of Texas,
By W. H. FINCH, *Deputy.*

* * * * * * *

UNITED STATES OF AMERICA:

Circuit Court, Fifth Circuit and Northern District of Texas.

The President of the United States of America to Carrie March Greeting:

169 You are hereby commanded to appear personally before the honorable circuit court of the United States for the northern district of Texas, in the fifth circuit, at a court to be holden at the city of Dallas, in and for said circuit, on the first Monday of January next, or whensoever the said court shall be there, to answer a bill exhibited against you, Harriett J. Dugan, W. P. Dugan, Daniel D. Dugan, Georgia Shannon, William M. Shannon, George H. Dugan, Mollie J. Dugan, Sarah E. March, John A. March, George March, Webster March, Welborne March, Murphy March, Maud March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, B. F. Lutterell, H. C. Lutterell, William Tucker, James Holt, J. D. Parnell, W. G. Salmon, Lottie Salmon, and A. M. Robbins, and

J. R. Mullin & Lutie D. McMullin, by Ida Underwood, Josie Underwood, Warner Underwood, and James H. R. Cundiff, and to do further and receive what the said court shall have considered in that behalf; and this that you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the northern district of Texas, at the city of Dallas, this 8th day of December, eighteen hundred and eighty-three, and of the Independence of the United States of America the 108th year.

L. S.

(Signed) A. J. HOUSTON,
Clerk U. S. Circuit Court, Northern District of Texas, at Dallas.

170 The defendant Carrie March is required to enter her appearance in the above suit in the clerk's office on or before the first Monday of January next; otherwise the bill will be taken as confessed.

(Signed) A. J. HOUSTON, *Clerk.*

Endorsed: No. 22. U. S. circuit court. Chancery. Ida Underwood *et al. vs.* H. J. Dugan *et al.* Subpœna. Issued Dec'r 8, 1883. Returnable January rules, 1884. Houston, clerk. Returned and filed first day of February, A. D. 1884. A. J. Houston, clerk, by H. P. Purcell, deputy.

* * * * * * *

In United States Circuit Court, Northern District Texas, at Dallas.

IDA UNDERWOOD *et al.*
vs.
H. J. DUGAN *et al.*
} No. 22.

And now comes complainants in this cause and moves the court for leave to withdraw from the files of this court their replication to defendants' answer herein and heretofore filed, and also for leave to amend their original bill.

(Signed) A. M. CARTER AND
LEAKE AND HENRY,
Solicitors for Complainants.

And now come also the defendants in said case and move the court for leave to withdraw from the files of this court their demurrers and answer heretofore filed.

(Signed) SAWNIE ROBERTSON,
For Def'ts, Except Robbins.

171 Endorsed: No. 22. Chancery. Ida Underwood *et al. vs.* H. J. Dugan *et al.* Motion for leave to withdraw replication and to amend and to withdraw demurrer & answer. Filed Jan'y 26, 1884. A. J. Houston, clerk.

* * * * * * *

In United States Circuit Court, Northern District of Texas, at Dallas.

IDA UNDERWOOD *et al.*
vs.
H. J. DUGAN *et al.* } No. 22.

In the above case, for the purpose of curing some inadvertances in the proceedings, such as filing answers and replication and taking evidence before the appointment of a guardian *ad litem* for some of the minor defendants, as well as some omissions in making proof of heirship and in proving the execution of title papers and in some other particulars, and for the purpose of avoiding delay and irregularities in the proceedings and trial of this cause, we make the following agreement:

1st. That the answer and demurrer of the defendants and the replication of the plaintiffs may be withdrawn from the files of this court.

2d. That a guardian *ad litem* shall then be appointed by the court for all of the minor defendants, who shall enter an appearance for them.

3rd. That an appearance shall be entered for all other defendants in said case for whom an appearance has not already been entered.

172 4th. That plaintiffs may amend their bill in any particulars, including the correction of names of and descriptions of parties, and adding other names and varying or enlarging their prayer for special relief by inserting such amendment in their original bill or otherwise as they may elect or by erasing and interlining the same only as outlined in amended bill now prepared.

5th. That after these proceedings are had the defendants may file their demurrer or answer, with such amendments thereto as they may desire to be considered, however, as now for the first time filed.

6th. After which and on the same or any subsequent day complainants shall file the general replication to said answer.

7th. All depositions heretofore taken and now on file in this cause shall, without being retaken, be considered and treated as if taken within the time prescribed by the rules governing this court and after this cause was at issue, and all objections to the time or form or manner of taking or returning any depositions in this case is expressly waived and the testimony stand published—no more to be taken. Objections going to the substance of the evidence shall alone be allowable under this agreement.

8th. It is admitted that the allegations in the original bill with regard to the death of Jonathan Robbins and the number and names, sexes, ages, marriages, and deaths of the children and descendants of said Jonathan Roberts are as alleged in complainants' bill,

173 and proof of the bill in those particulars is waived. This includes admission of the truth of the allegations with regard to the surviving wife of said Jonathan Robbins and her relation to the land in controversy as between her and said Jonathan Robbins.

9th. That all deeds and conveyances & lease of the property, except the transfer of the original certificate under which the land

was located, may, if filed before the case is heard and not contested by evidence or affidavit calling in question its execution, be read in evidence without other proof of their execution.

10th. That this agreement shall, upon being filed herein, become a part of the record in this case.

Witness our hands this the — day of January, 1884.

(Signed) A. M. CARTER AND
LEAKE AND HENRY,
Solicitors for Complainants.
SAWNIE ROBERTSON,
For Defendants Except Robbins.

It is also agreed that S. W. March died July 29, 1878, and administration was assumed on his estate Oct. 25, 1878.

Endorsed: No. 22. Ida Underwood *et al. vs.* H. J. Dugan *et al.* Agreement. Filed Jan'y 26, 1884. A. J. Houston, clerk.

* * * * * * *

In U. S. Cir. C't, Northern Dist. Texas, at Dallas. Jan'y Term, 1884.

IDA UNDERWOOD *et al.*
vs.
H. J. DUGAN *et al.* } No. 22.

174 This day, this cause coming on to be further heard upon the motions of complainants and defendants, it is ordered—

1st. That the defendants be, and they are hereby, granted leave to withdraw from the files of this court all demurrers, pleas, and answers by them at any time heretofore filed.

2nd. That the pl'ffs be, and they are hereby, granted leave to withdraw from the files of this court their general replication to defendants' answer now on file.

3d. That leave be given plaintiffs to amend their original bill in manner and form and according to terms of written agreement on file.

4th. That Sawnie Robertson, a citizen of the State, residing in the city of Dallas, be, and he is hereby, appointed guardian *ad litem* for the following-named defendants, who are shown by the original bill to be minors and who have been duly served with process of subpœna in this case—that is to say, for Maud March, Carrie March, Webster March, Welborne March, and Lottie Salmon and George March.

Endorsed: No. 22. Ida Underwood *et al. vs.* H. J. Dugan *et al.* Orders. Filed Jan'y 26, 1884. A. J. Houston, clerk.

* * * * * * *

175 In United States Circuit Court, Northern District of Texas, at Dallas.

IDA UNDERWOOD *et al.*
vs.
H. J. DUGAN *et al.* } No. 22.

And now comes the plaintiffs in above cause, and, leave of the court for that purpose being first obtained, amend their original bill herein, filed in this court June 13, 1881, as follows, to wit: They strike out the name "Ira" wherever it occurs in said bill and insert in lieu thereof the name "Ida," so as to make the name of one of the plaintiffs read "Ida Underwood" instead of "Ira Underwood." They further amend by alleging that now and at and before the date of the filing of their said original bill in this cause complainants Josie Underwood and Warner Underwood, who now prosecute this suit by Fanny U. Grider, who is a citizen of the State of Kentucky, as their next friend, own and then owned all the right, interest, and estate in the land in controversy therein alleged or shown to be in the said Ida Underwood or Ira Underwood, as the name was by inadvertence written.

They further amend by striking out all allegations that defendant Mollie Dugan is or was a minor, and charge that she is the wife of D. W. Humphreys, who is a citizen of the State of Texas, residing in Grayson county, in said State, and who is also made a party defendant hereto and is charged as if his name had been written as one of the defendants in the original bill. They further amend the prayer of their original bill by praying that the patent to S.

176 W. March, alleged to have been fraudulently issued, be not cancelled, but that it be declared to have been issued to said S. W. March and held by him and all the defendants herein holding under, by, or through him in trust for complainants James H. R. Cundiff, Josey Underwood, Warner Underwood, and A. M. Robbins as their respective interests may appear, and that all deeds, wills, transfers, leases, or other evidences of right in any of the defendants save said A. M. Robbins of said land or to said — be declared false and fraudulent and be cancelled and be held for naught; that if it shall appear that said S. W. March after having by fraud procured the issuance of letters patent to himself for said land sold and conveyed any part of the same to innocent purchasers for value so that the same is lost to plaintiffs, then that plaintiffs have and recover of the defendants Sarah E. March, who is the executrix of the last will of said S. W. March, as such executrix of said will, which was filed as an exhibit to their original bill, a judgment for the money value of said land as shown by the pleadings and proof in this cause. Complainants further amend by inserting the name of Lutie D. McMullin, formerly Lutie D. Dugan, and her husband, J. R. McMullin, who are citizens of the State of Texas, as residing in the county of Tarrant, in said State, in their said bill as defend-

ants thereto and apply to them all the allegations and charges of said bill therein applicable to the other Dugan defendants.

(Signed) A. M. CARTER AND
LEAKE AND HENRY,
Solicitors for Pl'ffs.

177 Endorsed: No. 22. Ida Underwood *et al. vs.* H. J. Dugan *et al.* Amended bill. Filed Jan'y 26, 1884. A. J. Houston, clerk.

* * * * * * *

IDA UNDERWOOD *et al.*
vs.
H. J. DUGAN *et al.*

It is agreed that on the 17th day of July, 1857, Squire W. March conveyed to Wm. Howith and W. C. Twitty the 1,343 acres of land described in defendants' answer; that the deed of conveyance was in the usual form of a general warranty deed to the end of the covenant of general warranty, to which was added the restrictive words "by, through, or under me" in writing; also that said Wm. Howith and W. C. Twitty, on the 5th day of October, 1860, conveyed the same 1,343 acres described in defendants' answer to George C. Dugan. The deed of conveyance was in the usual form of a general warranty deed; that both of said deeds were recorded as alleged in def'ts' answer.

(Signed) LEAKE & HENRY,
Solicitors for Complainants.
SAWNIE ROBERTSON,
W. O. DAVIS, &
H. O. HEAD,
Att'ys for Defendants.

Endorsed: No. 22. Ida Underwood *et al. vs.* H. J. Dugan *et al.* Agreement. Filed Feb'y 27, 1885. A. J. Houston, clerk.

* * * * * * *

178 THE STATE OF TEXAS,
County of Montague,

This article of agreement entered into between S. W. March, of Rusk county, Texas, by his legal, authorized, empowered, and constituted agent, W. T. Waybourn, of Montague county, for him and his stead, of the first part, and John Horton, of the second part, and who resides in the Montague county, Texas: The party of the first part agrees and binds himself by his said agent unto the party of the second part to lease to him six hundred acres of land in what is known as the Spanish Fort county, on Red River, in Montague county, the said leased premises hereinafter described being a portion of the surveys in the name of Thomas Scott and Finis Roberson. Said leased premises are described as follows, to wit: Beginning about 280 vrs. from the S. W. corner of John Norton's lease,

thence west 1,600 yards; thence north about 2,200 yards; thence east about 1,600 yards to the N. W. corner of Crow's lease; thence south 2200 yards to the place of beginning, so as to contain 600 acres, more or less; and the party of the first part binds himself to give said lessee peacible and uninterrupted possession of said above-described lease for five consecutive years, commencing Jan'y 1st, 1874, and Jan. 1st, 1879, and to defend unto said lessee full and quiet enjoyment of the same for the full expiration of said above-mentioned time. Now, in consideration of said above-described leased premises unto the said John Norton, party of the second part, by
179 W. T. Waybourn, agent of said S. W. March as aforesaid, the said party of the second part agrees and binds himself to plough, break, and cultivate the same and fence the same with a good and lawful fence, as is prescribed by the statute of the State of Texas as being a lawful fence; also to erect and build good double log cabins; also corn cribs and lots necessary to carry on a farm of 600 acres of cultivated land; and the party of the second part further binds himself with the party of the first part to peaceably quit and surrender up to the party of the first part said leased premises at the expiration of said lease, to wit, January first, 1879, with a good and lawfull fence and cabbins, corn cribs, and lots in good and substantial order and condition, with the same perfectly suitable for habitation and dwelling; and the party of the second part binds himself to the party of the first part that this agreement shall be a waiver of all notice to quit said leased premises at the expiration of said term prescribed in this said lease, to wit, Jan'y 1st, 1879.

Witness our hands this Jan'y 1st, 1874.

S. W. MARCH,
By his agent, W. T. WAYBOURN,
JOH- HORTON.

THE STATE OF TEXAS, }
County of Montague. }

Before me, W. A. Morris, clerk of the district court in and for said county and State, duly qualified and commissioned in terms of the law, personally appeared W. T. Waybourn, agent for S. W. March, and John Horton for himself, well known to me, who acknowl-
180 edged their signatures to the foregoing attached lease, dated the first day of January, 1874, and the said Waybourn and Horton declared to me that they had signed, sealed, executed, and delivered the same for all the purposes and considerations therein stated.

In testimony whereof I have hereunto set my hand and the seal of said court, at office, in the town of Montague, in said county, this the sixth day of January, 1874.

W. A. MORRIS,
Clerk D. C., M. C., Texas,
By WM. C. TURNER, *Deputy.*

Filed for record January 6th, A. D. 1874, at 4 p. m., and recorded the same day.

W. A. MORRIS,
Clerk Dist. Court,
By WM. C. TURNER, *Deputy.*

THE STATE OF TEXAS, }
The County of Montague. }

This agreement entered into between S. W. March, of the State of Texas and county of Rusk, by his duly authorized and empowered agent, W. T. Waybourn, of the State and county first mentioned, of the first part, and A. B. and J. K. White, of the State of Texas and county of Montague, of the second part: The party of the first part agrees and binds himself by his said agent to lease unto the party of the second part for five consecutive years 400 acres of *lyes as* land, the same being a portion of a survey in the name of Thomas Scott. Said 400 acres l*y*es as follows, to wit: Situated west of the leases of Roberson & Burton, and extending from Village
181 creek to the waters of Red River. The party of the first part binds himself by his said agent to g-arrantee unto the party of the second part full enjoyment and peaceable possession of the said 400 acres of land for the period of five consecutive years, said leace to commence 1st day of January, 1873. In consideration of said above-described leased premises unto the party of second part they agree and bind themselves unto the party of first part to break up and plough said described premises and to cultivate the same, and to fence the same with good rails, and to place and build upon the same two good log houses; and *and* the party of the second part further agrees with the party of first part to give unto him full and peaceable possession of the same at the expiration of the five years, which will be January 1st, 1878, and no further notice shall be necessary; and the parties of second part further agrees and binds themselves unto the party of first part to quit said premises at the expiration of the said five years with a good, lawful fence around the said 400 acres of land and two good log houses on the said described premises; and the party of second part further agrees and binds themselves to the party of first part to build all necessary outhouses on the said described premises, to wit: Stable, cow and horse lots, and outlots of various descriptions necessary for the carrying on a farm of 400 acres of cultivated land, and to leave
182 the same in good repairs and order at the expiration of said lease.

Witness our hands this March 2d, 1873.

S. W. MARCH,
By his agent, W. T. WAYBOURN.
A. B. WHITE.
JAMES K. WHITE.

Witness:
W. H. GRIGSBY.

THE STATE OF TEXAS, } No. 22.
County of Montague. }

Before me, W. A. Williams, clerk of the district court of said county and State, this day came and personally appeared W. H. Grigsby, whose name appears to the foregoing agreement as a subscribing witness, to me personally known, who, after being duly sworn, deposes and says that he saw W. T. Waybourn, as agent for S. W. March, and A. B. and J. K. White for themselves, parties to the foregoing article of agreement, execute, sign, and deliver the same, and that they acknowledged in his presence that they signed the same for the purposes therein set forth and expressed, and that he signed the same as a witness at the request of said parties.

In testimony whereof I hereto set my hand and official seal of office, at office, in Montague, this the 30th day of December, 1874.

W. A. WILLIAMS,
Clerk D. C., M. Co.

Filed for record Dec. 30th, 1874, at 4 o'clock p. m., and duly recorded the same day.

W. A. WILLIAMS,
Clerk D. C., M. Co.

THE STATE OF TEXAS, }
County of Montague. }

This article of agreement, made and entered into between S. W. March, of the State of Texas and county of Rusk, by his duly
183 authorized and empowered agent, W. T. Waybourn, of the State and county first mentioned, of the first part, and J. M. Crow, of the State and county first mentioned, of second part, witness-: The party of first agrees and binds himself by his said agent to lease unto the party of second part for five consecutive years 175 acres of land, the same being a portion of a survey in the name of Thomas Scott. Said 175 acres lies as follows, to wit: Beginning at the N. end of Norton's lease, thence N. to White's N. W. corner; thence W. far enough to get opposite with Norton's N. W. corner, running N. and S.; thence S. to Norton's N. W. cor.; thence east to place of beginning; and the party of the first part binds himself, by his said agent, to guarantee & defend unto the party of second part full enjoyment and peaceable possession of the said above-described premises for the period of five consecutive years, said lease to commence 1st day of January, 1873. In consideration of said above-described leased premises unto party of second part he agrees, covenants, and binds himself unto party of first part to break up, plough, and cultivate the said above-mentioned premises and to fence the same with good rails and to build a good log house upon the same; and the party of second part further binds himself unto party of first part to give unto him full and peaceable possession of said described premises at the expiration of five years, which will be January 1st, 1878, and that no further notice shall be
184 necessary; and the party of the second part further agrees and binds himself unto party of first part to peaceably quit said

premises at the expiration of said five years with a good, lawful fence around the said 175 acres of land, with a good log house on the same; and the party of second part further binds himself unto party of first part to build stables, horse and cow or stock lots, together with all necessary out *out* lots of various descriptions, and to leave the same in good repair and order at the expiration of said lease, to wit, Jan'y 1st, 1878.

S. W. MARCH,
By his agent, W. T. WAYBOURN.
J. M. CROW.

This May 16, 1878.

Witness:
W. H. GRIGSBY.

THE STATE OF TEXAS, } No. 23.
County of Montague. }

Before me, W. A. Williams, clerk of the district court of Montague county, in said State, this day came and personally appeared W. H. Grigsby, whose — appears as a subscribing witness to the above and foregoing written agreement, to me personally known, who, being duly sworn, deposes and says that he saw W. T. Waybourn, as agent for S. W. March, and John Crow for himself execute, sign, and deliver, as parties to said agreement, the same, and that they acknowledged in his presence that they signed the same for the purposes therein set forth and expressed, and that he signed the same as a witness at the request of said parties.

185 In testimony whereof I hereto set my hand and official seal of office, at office, in Montague, this the 30th day of December, 1874.

W. A. WILLIAMS,
Clerk D. C., Montague Co.

THE STATE OF TEXAS, }
County of Montague. }

This agreement, made and entered into between S. W. March, of the county of Rusk and State of Texas, by his agent, W. T. Waybourn, of Montague county, of the first part, and J. F. Norton, of second part, witness- that party of first part agrees and binds himself to lease unto the party of the second part 160 acres of land out of a survey in name of Thomas Scott, in Montague county and State of Texas, and party of first part agrees to lease said 160 acres of land unto party of second part for five consecutive years, said lease to commence Jan. 1st, 1873, and to continue to Jan. 1st, 1878. Said premises are situated and described as follows, to wit: Commencing at the S. W. cor. of A. B. White's farm, running W. 700 yards; thence N. 1,300 y'ds; thence E. 700 yards; thence S. to place of beginning, so as to contain 160 acres; and the party of first part agrees to sustain party of second part in undisputed and peaceable possession of the same for five consecutive years. Now, in con-

sideration of the above-leased premises, the party of second part agrees with party of first part to break up, plough, and put in a state of cultivation 150 acres of the land; to fence the entire
186 described premises in connection with White, Norton building half of the cross-fence between him and White with a good, lawful fence the 160 acres; and the party of second part agrees to fence around the 160 acres of land and to give possession of the said premises at the expiration of said lease without any further notice, and to leave the same with a good, lawful fence around the entire 160 acres of land. The party of second part further binds himself with the party of first part to build a good log house on said 160 acres of land, together with good stables, cow lots, and all necessary outhouses on the same, and also corn cribs and other houses and lots necessary to carry on an improved farm of 160 acres of land; and the party of second part agrees to give the party of first part peaceable possession of said premises at the expiration of said term, to wit, Jan'y 1st, 1878.

This March the 8, 1873.

S. W. MARCH,
By his agent, W. T. WAYBORN.
J. F. NORTON.

Witness:
W. H. GRIGSBY.

THE STATE OF TEXAS, } No. 24.
County of Montague. }

Before me, W. A. Williams, clerk of the district court of Montague county, in said State, this day personally appeared W. H. Grigsby, whose name appears as a subscribing witness to the foregoing article of agreement, to me personally known, who, being duly sworn,
187 deposes and says that he saw W. T. Waybourn, as agent for S. W. March, and J. F. Norton, for himself, execute, sign, and deliver, as parties to said agreement, the same, and that they acknowledged in his presence that they signed the same for the purposes therein set forth and expressed, and that he signed the same as a witness at the request of said parties.

In testimony whereof I hereto set my hand and official seal of office, at office in Montague, this the 30th day of December, 1874.

W. A. WILLIAMS,
Clerk D. C., Montague Co.

Filed for record Dec. 30th, 1874, at 4 o'clock p. m., and duly recorded the same day.

W. A. WILLIAMS,
Clerk D. C., M. Co.

THE STATE OF TEXAS, }
County of Montague. }

I, W. A. Williams, clerk of the county court in and for said county and State, do hereby certify that the foregoing is a true and correct

copy of the records of my office as to the leases therein recorded from S. W. March to John Horton, A. B. and J. K. White, John Crow, and John Norton, upon the land therein mentioned.

Given under my hand and seal of office this 1st day of June, 1883.

(Signed) W. A. WILLIAMS,
[L. S.] *County Clerk.*

Endorsed: No. 22. Ida Underwood *et al. vs.* H. J. Dugan *et al.* Copies of leases. Filed Feb'y 28, 1885. A. J. Houston, clerk.

* * * * * * *

188 IDA UNDERWOOD and Others
vs.
H. J. DUGAN and Others. } No. 21, Equity.

It appears from the pleadings and proof in this cause that Finess Roberson (whose name is spelled with some variations, rendered immeterial by the proof) on the 1st of March, 1838, obtained from the proper authority in Texas a certificate for one league and one labor of land; that on the 5th day of March, 1838, he conveyed this certificate by a transfer written on the back thereof to Warner L. Underwood. A separate instrument made same day limited Warner L. Underwood's title to a part and made him trustee for others as to the other part, not material to the issue in this case.

Soon after this transaction Roberson removed to Arkansas, and Underwood returned to Kentucky, and the next appearance of the certificate is in 1852, '3, in the office of the district surveyor of Grayson county, in which county it appears to have been located and the location forfeited by failure to return the filed-notes of the survey to the land office by 31 August, 1853.

On the 12 May, 1855, Finess Roberson, in Sevier county, Ar-
189 kansas, conveyed by separate writing said certificate to Dennis Trammel, and on the 23rd June, 1855, Dennis Trammel conveyed the certificate to S. W. March for valuable and adequate consideration. At that time the transfer to Underwood, which had been written on the back of the certificate, was completely covered and hidden by a piece of brown paper, just the size of the certificate, pasted on the back of the certificate, and the proof abundantly shows that S. W. March had no actual knowledge or notice of the transfer to Underwood. On the 8th of August, 1855, a patent issued to said March, as the assignee of said certificate, for the land in controversy. March claimed the land, paid taxes upon it, and about 1872 commenced placing tenants upon it under written leases, embracing specified parts of it, and a few years later built a dwelling-house upon it for his own residence, but died on the 29th day of July, 1878, before he had removed his residence to this land. Before the institution of this suit much of the land was in cultivation and more of it enclosed for pasture, many wells dug, and tenant-houses erected on the land and extensive and valuable improve-

ments made thereon, rendering the tract very valuable. The
190 defendants hold March's title. The complainants hold Underwood's title. Underwood died in February, 1872. This suit was filed June 13, 1881. The defendants, besides other pleas, urge that "the complainants' demand, if any they have, is stale and in a court of equity ought not to be heard."

This the bill attempts to avoid by charging fraud on the part of March in procuring the Roberson certificate and cancelling the transfer to Underwood, but this charge finds no support in the proof and is fully met by the answer and the defendants' proof. It is also set out in the bill, in explanation of the delay, that shortly after the purchase of the Roberson certificate by Underwood "said Underwood went from Texas with his family to the State of Kentucky, intending soon to return to Texas, but that business, ill health, and other causes delayed and prevented his return; * * * that by reason of his long and unanticipated absence, the disturbed conditions of the country, his ill health, and the bad faith and frauds of persons who found access to his papers they were misplaced, lost, abstracted, and destroyed." The proof shows that soon after the purchase of said certificate by Underwood said Underwood's father died in
191 Kentucky, leaving a large estate somewhat involved in complications; that Underwood was a good lawyer and business man and was engrossed with the business of said estate.

It is probable within the judicial knowledge of the court that public affairs and public-land matters were in an unsettled condition in Texas for nearly ten years after 1838, and again, from the 28th of January, 1861, to the 30 day of March, 1870, were so disturbed as to prevent the running of statutes of limitation.

It is further shown by the proof that for several years—at least two or three years—before his death said Underwood's mental condition was such as disabled him from giving due care to his business affairs.

The bill admits that in May, 1860, Underwood received information as to the condition of the certificate and the issuance of the patent, and the proof shows that his agent in Texas had ascertained the facts the previous winter. While the condition of the country was disturbed, as above stated, yet from 1838 to the institution of this suit, a period of 43 years, the general land office of the State and the courts of the State were constantly open. Thou-
192 sands of toiling, honest citizens were in good faith acquiring titles to land and redeeming them from their savage state and expelling the savage occupier. More than twenty-five years before the institution of this suit March paid one thousand dollars in gold for this certificate without any notice of the transfer to Underwood, and had the certificate located on good land, and followed up his location and procured the patent to himself on the chain of transfer submitted to the proper public officer, who decided that he was entitled to so receive it as assignee of Roberson. The proof in this case shows the transfer to Trammel to be genuine, and the transfer from Trammel to March is not questioned, and if Trammel was guilty of any fraud in connection with it the proof does not implicate March

n it, but strongly negatives such an implication. Now, when Roberson and Underwood and Trammel and March are all dead and the transactions of 1838 faded from the memories of the few who may survive, more than twenty-five years since March acquired in good faith and for full value the legal title to the land of which Underwood might have obtained knowledge then and of which he did have actual knowledge more than twenty years before the
193 bringing of this suit, during all of which years Underwood and the complainants have been resting quietly and letting March and the defendants put their money and labor and skill into this land, the complainants come and pray "that the patent to S. W. Marsh be declared to have been issued to said S. W. March and held by him and all the defendants herein holding under him or through him in trust for complainants."

In my opinion the complainants have waited to- long, and their prayer in a court of equity cannot be granted, and the bill should be dismissed at complainants' costs, and it will be so ordered.

(Signed) A. P. McCORMICK, *Judge.*

(Endorsed:) No. 22. Cir. c't, chancery. I. Underwood *et al. vs.* H. J. Dugan *et al.* Decree. Filed May 22, 1885. A. J. Houston, clerk.

IDA UNDERWOOD *et al.*
vs.
H. J. DUGAN *et al.*
} No. 22, Chancery.

On Friday, May 22, 1885, this cause, having been heard upon bill, answer, exhibits, & proof at the January term of this court, was taken under advisement, and now at this term it was the
194 opinion of the court that plaintiffs' cause of suit is barred by their laches and the lapse of time, and it was considered by the court and so ordered, adjudged, and decreed that the bill of said complainants, Ida Underwood, Josie Underwood, Warren Underwood, James H. I. Cundiff, and Fannie U. Grider, be dismissed, and that said defendants, Harry J. Dugan, Wm. P. Dugan, Dan'l D. Dugan, Georgie Shannon, Wm. M. Shannon, Geo. H. Dugan, Mollie J. Humphreys, D. H. Humphreys, Sarah E. March, Jno. A. March, George March, Webster March, Wellborn March, Murphy March, Carrie March, Maud March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, D. F. Lutrell, H. C. Lutrell, Wm. Tucker, Jas. Holt, J. D. Parnell, W. G. Salmon, Lottie Salmon, J. R. McMullin, Ludie D. McMullin, and A. M. Robbins, go hence without day and recover of said complainants and the sureties upon their cost bond, W. H. Cundiff, P. S. Pfonts, W. L. Hall, and L. F. Smith, all the costs of this suit, for which execution may issue if they are not paid in ten days from this date; and the said complainants in open court excepted to the said decree dismissing their said bill and gave notice of appeal.

(Signed) A. P. McCORMICK, *Judge.*

195 In United States Circuit Court for the Northern District of Texas, at Dallas.

JOSEY UNDERWOOD, WARNER UNDERWOOD, W. H. Cundiff, as Administrator of the Estate of James H. R. Cundiff, Deceased,
vs.
HARRIET J. DUGAN, WILLIAM P. DUGAN, DANIEL D. Dugan, Georgia Shannon, William M. Shannon, George H. Dugan, Sarah E. March, John A. March, George March, Webster March, Murphy March, Carrie March, Maud March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, B. F. Lutterell, H. C. Lutterell, William Tucker, James Holt, J. D. Parnell, W. G. Salmon, Lottie Salmon and A. M. Robbins, Mollie Humphreys, D. W. Humphreys, Lutie D. McMullin, and J. R. McMullen. } In Chancery.

To the judges of the circuit court of the United States for the northern district of Texas, at Dallas:

The petition of Josey Underwood and Warner Underwood, by their next friend, Fannie U. Grider, and W. H. Cundiff, as administrator of the estate of James H. R. Cundiff, deceased, plaintiffs in the above-entitled cause, prays your honors to allow them an appeal to the Supreme Court of the United States against all the defendants in said cause from the final decree rendered therein by said circuit court and entered of record on its minutes on, to wit, the 25 day of May, 1885; and pl'ffs pray that the amount of an appeal bond to be given by them be fixed and their bond be accepted and approved, and that your honors will sign & issue citation to be served
196 upon all of said defendants or upon one of their solicitors of record in said cause, requiring them to appear before said Supreme Court at the next term thereof, and that the clerk of this court make out a complete transcript of this cause and duly certify to the same, and that said decree be reversed by said Supreme Court and a correct decree be entered by it in this cause.

(Signed) LEAKE & HENRY,
Solicitors for Plaintiffs.

Endorsed: No. 22. Josey Underwood *et al. vs.* H. J. Dugan *et al.* Petition of pl'ffs for allowance of appeal. Filed Jan'y 29, 1887. A. J. Houston, clerk, by Jas. D. Adams, deputy.

* * * * * * *

Know all men by these presents that we, Josey Underwood and Warner Underwood, by our next friend, Fanny U. Grider, and W. H. Cundiff, as administrator of the estate of James H. R. Cundiff, deceased, are held and firmly bound unto Harriett J. Dugan, William P. Dugan, Daniel D. Dugan, Georgie Shannon, William M. Shannon, George H. Dugan, Sarah E. March, John A. March, George March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, B. F.

Lutterell, H. C. Lutterell, Webster March, Welburn March, Murphy March, Carrie March, Maud March, William Tucker, James Holt, J. D. Parnell, W. G. Salmon, Lottie Salmon, A. M. Robbins, Mat-
197 tie Humphries, D. W. Humphries, Lutie and J. R. McMullen, in the full and just sum of five hundred dollars, to be paid to the said Harriett J. Dugan, William P. Dugan, Daniel D. Dugan, Georgia Shannon, William M. Shannon, George H. Dugan, Sarah E. March, John A. March, Maude March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, B. F. Lutterell, H. C. Lutterell, William Tucker, James Holt, J. D. Parnell, W. G. Salmon, Lottie Salmon, A. M. Robbins, Mattie Humphries, D. W. Humphries, Lutie D. McMullen, and J. R. McMullen, their certain attorneys, executors, administrators, or assigns; to which payment, well & truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of ——, in the year of our Lord one thousand eight hundred and eighty-seven.

Whereas lately, at a term of the United States circuit court for the northern district of Texas, at Dallas, in a suit depending in said court between Josey Underwood & Warner Underwood, by their next friend, Fanny U. Grider, and James H. R. Cundiff (now deceased), as plaintiffs, against Harriett J. Dugan, William P. Dugan, Daniel D. Dugan, Georgia Shannon, William M. Shannon, George H. Dugan, Sarah E. March, John A. March, George March, Webster March, Welburn March, Murphy March, Carrie March, Maud March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, B. F. Lutterell, H. C. Lutterell, William Tucker, James Holt, J. D.
198 Parnell, W. G. Salmon, Lottie Salmon, A. M. Robins, Mollie Humphries, D. W. Humphries, Lutie D. McMullen, and J. R. McMullen, a final decree was rendered against the said Josey Underwood, Warner Underwood, and James H. R. Cundiff, and the said Josey Underwood & Warner Underwood, by their next friend, Fanny U. Grider, and W. H. Cundiff, as administrator of the estate of James H. R. Cundiff, deceased, having obtained an appeal from said court to reverse the said decree in the aforesaid suit, and a citation directed to the said Harriett J. Dugan, William P. Dugan, Daniel P. Dugan, Georgia Shannon, William M. Shannon, George H. Dugan, Sarah E. March, John A. March, George March, Webster March, Wilburn March, Murphy March, Carrie March, Maud March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, B. F. Lutterell, H. C. Lutterell, Wm. Tucker, James Holt, J. D. Parnell, W. G. Salmon, Lottie Salmon, A. M. Robins, Mollie Humphries, D. W. Humphries, Lutie D. McMullen, and J. R. McMullen, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next: Now, the condition of the above obligation is such that if the said Josey Underwood & Warner Underwood, by the said Fanny U. Grider, as their next friend, and the said W. H. Cundiff, as administrator of the estate of James H. R. Cundiff, deceased, shall prosecute their appeal to effect and answer

all costs if they fail to make their plea good, then the above
199 obligation to be void; else to remain in full force and virtue.

(Signed) JOSIE UNDERWOOD. [SEAL.]
WARNER UNDERWOOD. [SEAL.]
FANNY U. GRIDER, [SEAL.]
By W. H CUNDIFF, *Agent.*
W. H. CUNDIFF, [SEAL.]
Adm'r of the Estate of J. H. R. Cundiff, Dec'd.
W. H. CUNDIFF. [SEAL.]
M. W. SHOEMAKER. [SEAL.]

Sealed and delivered in presence of—
C. V. TERRILL.

Approved by—

A. P. McCORMICK,
U. S. Dist. Judge, Northern Dist. of Texas.

Jan'y 29, 1887.

THE STATE OF TEXAS, }
County of Wise. }

I, H. L. Ward, clerk of the county court in and — Wise county, Texas, do hereby certify that I am personally acquainted with W. H. Cundiff and M. W. Shoemaker, and that they have sufficient property in Wise county, subject to execution, to make the amount named in this bond, and if *the* was presented to me for approval I would approve the same.

L. S. Given under my hand and seal of office this January 21st, 1887.

(Signed) H. L. WARD,
Cl'k C. C., W. C., Texas.,
By JOHN W. MOORE, *Deputy.*

Endorsed: No. 22. Josey Underwood *et al. vs.* H. J. Dugan *et al.* Appeal bond. Filed Jan'y 29, 1887. A. J. Houston, clerk, by James D. Adams, deputy.

200–202 In United States Circuit Court, Northern District of Texas, at Dallas.

JOSEY UNDERWOOD *et al.* }
vs.
H. J. DUGAN *et al.* }

Be it remembered that on this the 29th day of January, A. D. 1887, upon the petition of Josey Underwood and Warner Underwood, by their next friend, Fanny U. Grider, and W. H. Cundiff, as administrator of the estate of James H. R. Cundiff, deceased, who are the plaintiffs in the above cause, an appeal of this cause from the final decree of this court rendered and entered of record herein on the 25 day of May, A. D. 1885, to the Supreme Court of the United

States is allowed in favor of said plaintiffs and against all of the defendants therein, who are named as follows, to wit, Harriett J. Dugan, William P. Dugan, Daniel D. Dugan, Georgia Shannon, William M. Shannon, George H. Dugan, Sarah E. March, John A. March, George March, Webster March, Welborn March, Murphy March, Carrie March, Maud March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, B. F. Lutterell, H. C. Lutterell, William Tucker, James Holt, J. D. Parnell, W. G. Salmon, Lottie Salmon, A. M. Robins, Mollie Humphries, D. W. Humphries, Lutie D. McMullen, and J. R. McMullen. The appeal bond to be given by plaintiffs is fixed at the sum of five hundred dollars.

(Signed) A. P. McCORMICK,
U. S. Dist. Judge, Northern District of Texas.

Endorsed: No. 22. Josey Underwood *et al. vs.* H. J. Dugan *et al.* Order allowing appeal to the Supreme Court. Filed Jan'y 29, 1887. A. J. Houston, clerk, by Jas. D. Adams, deputy.

203 The United States of America to Harriette J. Dugan, Wellborn P. Dugan, Daniel D. Dugan, Georgia Shannon, William M. Shannon, George H. Dugan, Sarah E. March, John A. March, George March, Webster March, Murphy March, Carrie March, Maud March, Andrew Smith, Daniel Cable, Andrew Tucker, David Musick, B. F. Lutrell, H. C. Lutrell, William Tucker, James Holt, J. D. Parnell, W. G. Salmon, Lottie Salmon, and A. M. Robins, Mollie Humphreys, D. W. Humphreys, Lutie D. McMullen, J. R. McMullen, & Wilburn March, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the northern district of Texas, at Dallas, wherein Josey Underwood and Warner Underwood, minors, by their next friend, Fanny U. Grider, and W. H. Cundiff, as administrator of the estate of J. H. R. Cundiff, deceased, are appellants and you are appellees, to show cause, if any there be, why the final decree rendered against the said appellants,
204 as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable A. P. McCormick, judge of said circuit court, this 29 day of January, in the year of our Lord one thousand eight hundred and eighty-seven.

(Signed) A. P. McCORMICK,
U. S. Dist. Judge, Northern District of Texas.

(Endorsed:) Josey Underwood *et al. vs.* H. J. Dugan *et al.* Citation to appellees. Service accepted May 18, 1887. (Signed) Sawnie Robertson, solicitor for def'ts.

205 *Letters of Administration.*

THE STATE OF TEXAS, }
County of Montague. }

I, W. A. Williams, clerk of the county court of Montague court, Texas, do hereby certify that on the 16th day of November, A. D. 1886, Wm. H. Cundiff qualified, according to law, as administrator of the estate of James H. R. Cundiff, deceased.

These are, therefore, given to prove his capacity as such.

Witness my hand and the seal of the county court of Mon-
SEAL. tague county, at Montague, Texas, this the 16th day of November, A. D. 1886.

(Signed) W. A. WILLIAMS, *Clerk.*

(Endorsed:) No. 22. Chancery. Josey Underwood *et al. vs.* H. J. Dugan *et al.* Letters of administration to W. H. Cundiff upon estate of James H. R. Cundiff, deceased. Filed Jan'y 29, 1887. (Signed) A. J. Houston, clerk, by Jas. D. Adams, deputy. No. 262. Estate of Jas. H. R. Cundiff, deceased. Letters of administration. Issued the 16th day of Nov'r, A. D. 1886. (Signed) W. A. Williams, clerk.

206 Interrogatories to Wade Horton, Ruben Horton, Sandy Horton, John Horton, James P. Stone, J. W. Deavenport, J. W. Ritch, and William Wilson, residents of Montague county, Texas, and John Crow, who resides on Beaver creek, Pickings county, Chickasaw Nation, Indian Territory.

Int. 1st. State your age, name, and place of residence.

Int. 2nd. Did you ever know Squire W. March? If so, when, where, and how long did you know him?

Int. 3rd. This suit is for a league and labor of land in Montague county, Texas, patented on the 8th day of August, 1855, to S. W. March, assignee of Finess Robinson. Do you know said land and where it is situated?

Int. 4th. How far do you reside from said land, and how long have you lived there, and how long have you known said land?

Int. 5th. Do you know where the one thousand acres of said land claimed by George Dugan and known as the locative interest is situated? If so, state who has claimed said locative interest and who has claimed the balance of said Robinson survey since you have known said land.

Int. 6th. Has that part of said Robinson survey that was claimed by S. W. March ever been occupied? If so, state when and how long; where such occupancy commenced and how long it was continued, and whether it is now occupied.

Int. 7th. State who first occupied said land, and how long he or they occupied the same, and how they occupied it—whether in their own rights or as tenants for some one else—and, if as tenants, whom they held under.

207 Int. 8th. Commence at the time when said land was first occupied and state who have occupied said land for each year since that time, if it has been occupied every year, and state how each occupant claimed, whether in his own right or as tenant under some one else, and if as tenant under whom did he enter and hold. State all you may know in reference to the occupation of the land claimed by said March that will be of any benefit to the parties at issue as fully as if hereto specially interrogated.

Int. 9th. Has said land been occupied since the death of said S. W. March? If so, by whom, how long, and how did the occupants claim—in their own right or as tenants for some one else; and, if as tenants, whose tenants were they?

Int. 10th. When you first knew said land was it improved or unimproved? Is said land now improved or not? If improved, state what improvements there are on said land, by whom and where they were made, and the present nature of said improvements.

Int. 11. Has any part of said land ever been cultivated? If so, state how much, for what years, and by whom said land has been cultivated. Did the persons cultivating said land pay rent to any one; if so, to whom did they pay rent?

Int. 12th. What would be the present cash value of said land without any improvements upon it and what is the present cash value of said land with the improvements thereon?

Int. 13th. State any other fact within your knowledge that would be of advantage to either party to this suit as if specially interrogated with reference thereto.

DAVIS AND GARNETT AND
SAWNIE ROBINSON,
Solicitors for Def'ts.

208 Cross-interrogatories propounded by complainants to Wade Horton, Sandy Horton, James P. Stone, J. W. Ritch, W. T. Wayborn, Reuben Horton, John Horton, J. W. Deavenport, and William Wilson, of Montague county, Texas.

Cross-int. 1st. What is your age and where do you reside? Are you a party to or in any way interested in this suit or are you related to any one who is? And, if so, explain how and in what degree.

Cross-int. 2nd. State when and under what circumstances you first saw the Finess Robinson land certificate and in whose possession it then was and what was being then done with it.

Cross-int. 3rd. Do you say positively and mean to be understood that at the date of your first seeing said land certificate there was no transfer of said certificate endorsed thereon and that there was no paper or other substance attached thereto or fastened on it as to obscure and cancel a transfer written or endorsed thereon? Do you say that at the time said certificate was returned to the land office of Texas with the field-notes of the land in controversy in this suit there was not a transfer of said certificate to Warren L. Underwood endorsed thereon? Do you say or mean to be understood that at

the date of its being so returned to said land office there was not a piece of paper or some other substance so attached or fastened to said certificate as to conceal endorsements thereon?

Cross-int. 4th. Have you seen said certificate since it was filed in the land office; and, if so, how many times, when, where, and in whose presence? And state whether at any time when you saw it it had any endorsement on it or paper pasted over it, and, if either, state what it was, and state if the same was placed there after
209 you first saw it, and if you state there was such endorsement or paper placed thereon state if you know when it was done, who by, and for what purpose.

Cross-int. 5th. If you say that S. W. March acquired said certificate, state what price he paid for it, how and when he paid it, and who to, and whether at the time of purchasing and paying for it he obtained his deed or transfer thereto, and whether the same had not been located on the land in contest before he so purchased. Where was the certificate when he purchased? Was it delivered then or afterward? And state the fair market value of the land on which it is now located.

Cross-int. 6th. State whether said S. W. March was an illiterate or an educated man. If he had a profession, state what it was. If you state he purchased said land certificate or that it was purchased for him, state his age at the time. State whether or not he was a cautious trader. State whether he was a man of property and a successful business man. Was he not a man of much above ordinary intelligence? Was he not a man of great capacity for business? Did said S. W. March ever have said certificate in his possession after he purchased it; and, if so, how often and for how long? If he did not have it in his possession after its purchase by or for him, state who did. State every person in whose possession it was after its purchase by or for said March until it was returned to the land office, as far as you are able.

Cross-int. 7th. If you speak of examining said certificate at any time, state in whose presence you made such examination, and its result, or what you ascertained.

Cross-int. 8th. If you, in reply to direct interrogatories, make any statement about any sale or transfer of said land certificate or of the land or of any of the land located by it and now in controversy, you will state the date of such sale or transfer and whether
210 it was before or after the issuance of a patent for said land. State whether such sale was written or verbal. State what was sold and what consideration was paid therefor. State whether a warranty or quitclaim title was made; and, if in your power to do so, attach a part of your answer to the original writing, if there was such; and if you speak of any leases made by any one of said land or any part of the same, state if such lease or leases were in writing, and attach them or true copies thereof to your answer, if you can; and if you do not *so* any one of such leases, then state what quality of land each lease was for, where such land lies, and how it is bounded, and for what length of time such lease was given, and how and what possession was taken or held thereunder, if any, and

by whom and for what years, stating at the same time your means of knowledge. Did the lessees or any part of them live on the land in controversy or on an adjoining survey? State this as to each tenant.

Cross-int. 9th. Is it not a fact that only a small portion of said land has ever been actually occupied by said S. W. March or by any one claiming the same under or through him, and that the larger portion thereof has remained unoccupied since it was located by said certificate; and is it not a fact that the portion thereof claimed by the denizen of G. C. Dugan has never been occupied at all by any one? And if you say any portion of said — has been occupied by said S. W. March or G. C. Dugan or any one for or under them or either of them, then state who by and when and the metes and bounds held by each, and state your means of knowing and whether it was under a written or verbal lease of authority.

Cross-int. 10th. What is the present market value of said league of land?

Cross-int. 11th. What is the annual rental value of so much of said league of land as has been actually occupied and enclosed?

211 Cross-int. 12th. Give a full statement of all improvements of a permanent nature put on said land within your knowledge, including the number of acres enclosed, and stating how enclosed, and the buildings or other improvements placed thereon, stating separately in every case the name of the person putting or having placed thereon such improvements, the character of each person's improvements, the year when each was put there, and the present value of the same.

Cross-int. 13th. Where was the Finess Robinson certificate when you first heard of it or when you first saw it? When you first saw it, what year? In whose possession was it, and how did Dennis Trammel come to learn of it, buy it, and sell it to S. W. March, and where did Dennis Trammel live at that time, and had you and he had any correspondence prior to said purchase in regard to it, and how soon after Trammel claimed to have purchased said certificate was it — saw him, and how did it happen or occur that you met him? Was it not by appointment and through a prior understanding? Where was the said land certificate on the following days and times, to wit, May 12th, A. D. 1855; June 2, 1855?

Cross-int. 14th. Did you ever see the said certificate in the possession of J. P. Dumas, or did you ever hear him say he had it, or are you in any way informed that he did have it; and if you saw it in his, J. P. Dumas', possession or knew it to be in said Dumas' possession or within his control when was this? What had he to do with it? What did he tell you about the certificate, if anything, or about the transfer on the back of same? When and where did Dennis Trammel first get said certificate, and from whom, and for what did you first confer with said Dennis Trammel, or he with you, about it?

Cross-int. 15th. How long after the certificate was located

212 on the land in contest — before the same was returned to the general land office? Is it not true that this Finess Robinson certificate had been located in Grayson county, Texas, prior to its

being located on the land in contest? Did not J. P. Dumas have it for location in Grayson county, Texas, and did he not claim or have an interest in the land in Grayson county, Texas, on which said land certificate was so located immediately after the said certificate was removed from the Grayson county location, and when and why was the said certificate so removed from the Grayson county location? When was it located first in Grayson county, and who for?

Cross-int. 16th. Do you not know that S. W. March builded a residence or dwelling-house near the land in contest on the Scott survey and on a less eligible spot than he could have found on the Finess Robinson survey, and that he, S. W. March, refused to build on the land in contest, and because he was not satisfied with line title to same? Did you not hear him make a statement to that effect? Were not the houses, fencing, and other improvements put on the land previous to the death of said S. W. March of a very cheap and inferior character, and do you not know or have you not heard him say in substance that his reason for not having better improvements put on the land was that his title to the land was unsatisfactory or disputed?

A. M. CARTER AND
WELLBORNE, LEAK AND HENRY,
Solicitors for Plaintiffs.

213 *Answers to the Interrogatories Propounded to the Witness, Wade Horton.*

To the first interrogatory he answers: Wade Horton; 43 years of age; reside in Montague county, Texas.

To 2nd Int. he answers: I knew him in 1874 or 1875, thence up to his death. I knew him in Montague county & met him elsewhere.

To 3 Int. he answers: I know the land. It is situated in Montague.

To 4th Int. he answers: About 1 mile. I have lived there two years. I have known the land 8 or 9 years.

To 5 Int. he answers: I know where Dugan's interest is situated. Dugan has claimed that interest. Dr. March claimed the balance.

To 6th Int. he answers: March's part of the land has been occupied; in the year 1872 by Norton; leased from thenceforward to present time, and it is now occupied.

To 7 Int. he answers: Norton—Norton and those under him—occupied for 5 years. They all claimed under S. W. March.

To 8 Int. he answers: It was occupied in 1872 by Nortons & in
1873 — Horton Brothers. The leases were for 5 years. There
214 — many other tenants on it since whose names I cannot recollect, but they all claimed under March.

To 9 Int. he answers: It has; by tenants holding under W. G. Salmon, the son-in-law of S. W. March. I can't give the duration of each tenant's occupancy, nor can I give their names in detail. They all claimed under Salmon since the death of March.

To 10 Int. he answers: A portion of it was. It is now improved

by rail and wire fence and tenants' houses, wells, and other outhouses; about 1,000 acres in cultivation. The improvements were put there 1872 & 1873, and from time to time to the present the improvements were placed there by the tenants of March and by W. G. Salmon. They are good and permanent.

To 11 Int. he answers: Yes; much of it—1,100 acres; from 8 to 10 years. The lessees paid rent the first 5 years by improving the land; after that they paid rent to March and Salmon.

To 12 Int. he answers: About $3.50 per acre; that part claimed by March with the improvements is worth $13.50 per acre.

To 13 Int. he answers: I know of no other fact that would be of advantage to either party.

WADE HORTON.

To the cross-interrogatories the witness answers as follows:

To 1st X Int. he answers: I have stated my age and residence in direct interrogatory No. 1. I am not interested in the suit nor related to any one who is.

215 To 2nd X Int. he answers: I never saw the certificate.

To 3 X Int. he answers: I say nothing about that, for I know nothing about it.

To 4 X Int. he answers: I say nothing about the certificate, for I know nothing about it.

To 5 X Int. he answers: I know nothing about the certificate or March's purchasing it. The fair market value of the land owned by March, with the improvements on it, is $13.50 per acre.

To 6 X Int. he answers: March was educated. He — a physician. I don't know how old he was when he bought the certificate. He was a good trader; so understood. He was successful in business. I would take him to be a man of superior business qualifications. I know nothing about March's connection with the certificate nor any other person, nor when it was returned to the land office.

To 7 X Int. he answers: I never examined the certificate; know nothing about it.

To 8 X Int. he answers: I know nothing about the sale of the land or the certificate. The Horton Bros. lease was in writing. I can't attach the copy of the lease, for I have none. Horton Brothers' — were supposed to be about 700 acres. It was on March's part of Fenis Robinson's land. It is in north part of survey and east of Dugan's locative interest. The leases were given for 5 years. The lessees took possession by going immediately on the land and cultivating and improving the same. It was from the year 1874

216 to 1878, inclusive. We took possession of the land about October, 1873. The written lease — dated from Jan. 1st, 1874. Nortons were on it a year or two before. I know nothing about his lease or boundaries except they claimed to hold on it 5 years. The lessees all lived on the land. I know it from being one of the tenants.

To 9 X Int. he answers: It is all under fence now. Dugan's part has never been occupied by any one; 1,000 acres, more or less, has been cultivated by March's tenants from 1872 to 1878; the balance

is now in pasture, enclosed by Salmon in 1881. I don't remember all the tenants. I can't state the metes and bounds held by each. Horton Brothers had a written lease; as to the others I can't say.

To 10 X Int. he answers: The present value of the league of land, without the improvements, is $3.50 per acre.

To 11 X Int. he answers: I don't know.

To 12 X Int. he answers: About 1,000 in cultivation, under a good rail fence, with good tenant-houses, wells, and outhouses; balance of the land owned by March is enclosed in a pasture by wire fence. The improvements were put there at the instance of March & Salmon, but the names of the individuals who placed them there I don't remember. Norton's & Horton's brothers put some of the improvements there. They put these improvements on the land from 1872 to 1878; that Salmon put the wire fence which encloses the pasture in 1881. The improvements on the land owned by March is worth somewhere in the neighborhood of $30,000.00.

217 To 13 X Int. he answers: I know nothing of the certificate, nor did I ever know or see Dennis Trammel, nor never heard of him until now.

To 14 X Int. he answers: I know nothing about the certificate or J. P. Dumas' connection with it in any manner whatever, nor Dennis Trammel.

To 15 X Int. he answers: I don't know a thing about what is asked me in X Int. No. 15.

To 16 X Int. he answers: I know March built a residence on the Scott survey. He told me he built in the valley to protect himself from storms. March said nothing to me about the title to the Fenis Robinson land in selecting his building location, but said to me on other occasions that old Cundiff was trying to steal his land. The improvements were good, substantial improvements. I never heard March say that his title was unsatisfactory, but that it was disputed.

WADE HORTON.

218 To the first interrogatory REUBEN HORTON answers as follows:

To the 1st Int. witness answers: My name is R. D. Horton. My age is 28 years. I live in Burlington, Montague county, Texas.

To Int. 2nd witness answers: I don't know Squire W. March personally. I have seen him; I saw S. W. March 3 or 4 years ago. I saw him in Burlington, Montague county, Texas.

To 3rd Int. witness answers: I know the land; I know where it is situated.

To the 4th Int. the witness answers: I live about ½ mile from the land. I have been there since 1873. I have known the said land since 1873.

To 5th Int. witness answers: I know where the 1,000 acres of land claimed by Dugan is situated. Dugan has claimed the locative interest. S. W. March and W. G. Salmon, the son-in-law of S. W. March, has claimed the balance of the land.

To 6th Int. the witness answers: That part of the survey claimed

by March has been occupied. It has been occupied 9 years by the Horton Brothers—that is, they went on it 9 years ago, and their lease was out in 5 years. There were other tenants on the land when we went there. The tenants who went on previous to us had been on the land 3 years when we went on it. I have already stated we went on the land 9 years ago. The occupancy of said lands begun in 1870. The occupancy has been continued up to the present time. It is now occupied.

219 To 7th Int. the witness answers: A. B. White first occupied the land. He occupied it for 5 years. He occupied it as a tenant under S. W. March.

To 8th Int. witness answers: I cannot tell the occupants of each year since it has been occupied up to the present time. It has been occupied by various tenants. Said tenants all claimed occupancy under S. W. March and W. G. Salmon, the son-in-law of S. W. March. I have stated as fully as I can as to the occupancy of said land.

To 9th Int. witness answers: Said land has been occupied since the death of S. W. March by various tenants. I cannot state how long each tenant occupied said land. The Horton Brothers stayed on it for 5 years. The tenants all claimed their rights under March and Salman.

To 10th Int. witness answers: When I first knew the Fenis Robinson land claimed by S. W. March it had improvements on it. Said land is not improved. The land is under a good rail and wire fence. Tenant houses, lots, wells, and other improvements are on said land. There is about 1,500 *hundred* acres of said land in cultivation. Said improvements were placed there by March and Salmon. The improvements are very good, substantial improvements.

To 11th Int. witness answers: A part of said land has been cultivated. I have already stated that about 1,500 acres of said land is in cultivation. From the year 1870 up to the present time said land has been in cultivation. It has been cultivated by various tenants from time to time till the present day. During the time of the first lease, which lasted 5 years, no rent was paid on said land,

220 but from that time to this rent has been paid.

To 12th Int. witness answers: The present cash value of the Fenis Robinson land is (2.50) two dollars & fifty cents per acre. The present cash value of said land, with the improvements on it, is fifteen (15) dollars per acre.

To 13th Int. witness answers: I don't think there is anything else I could state that would be of any advantage to either party to this suit.

R. D. HORTON.

To the cross-interrogatories the witness, R. D. HORTON, answers as follows:

To 1st X *cross* interrogatory witness answers as follows: My age is 28 years; I reside in Burlington, Montague county, Texas. I am not a party nor am I in any way interested in this suit. I am not related to any one who is.

To 2nd X Int. witness answers: I never saw the Fenis Robinson land certificate, nor do I know anything about it, or what was being done with it.

To 3 X Int. witness answers: I have above stated that I never saw said certificate, nor do I know anything about it or its transfers or endorsements, nor do I know anything about any paper being
221 wrapped around it or anything else whatever that pertains to said land certificate, or its being returned to the land office.

To 4 X Int. witness answers: I have already stated I know nothing about the certificate or its being returned to the land office, or whose possession it was in.

To 5 X Int. witness answers: I don't know that Dr. March ever bought said certificate or anything else about his connection with it, nor do I know anything about the location of said certificate. The fair market value of the land claimed by S. W. March, with the improvements on it, is worth fifteen (15) dollars per acre.

To 6 X Int. witness answers: I know nothing about Dr. S. W. March's education. He was a doctor. I have already said I know nothing about the purchase of the certificate or the time it was bought. I know nothing about Dr. March's trading qualities. He was a man of some property. I don't know anything about his business qualifications. I don't know how intelligent he was. I don't know anything about his business qualifications. I know nothing about the Fenis Robinson land certificate, and if S. W. March ever had it in his possession I do not know it.

To 7 X Int. witness answers: I never examined said land certificate.

222 To X Int. 8 witness answers: I don't know anything about any sale or transfer of said land certificate. I think our lease was in writing. I cannot attach a copy of the lease to my answers, for I don't know where they are. The leases were on valley land. The land lies on Red Run, one mile west of Burlington. It is bounded on north by Red Run, bounded on the east by Thomas Scott survey, on south and west by number of small surveys. Each of the first leases were taken for 5 years. Possession was taken and held under March and Salmon. The leases run from the year 1870 up to the years of 1877 or 1878. I know this from having been one of the tenants myself. All of the tenants I have spoken of lived on the Fenis Robinson survey, and not on adjoining surveys.

To 9th X Int. witness answers: Nearly all of the valley claimed by S. W. March on the Fenis Robinson survey is in cultivation. It is not a fact that a small portion of it has been occupied. The part of the Fenis Robinson land claimed by G. C. Dugan is not occupied. If there was ever any lease given on the G. C. Dugan locative interest of the Fenis Robinson survey I don't know it. My means of knowledge is from living near the land.

To 10 X Int. witness answers: The present market value of said league of land without improvements on it is two (2.50) dollars and a half per acre.

To 11 X Int. witness answers: I don't know what the annual rental value of said land is.

To 12 X Int. witness answers: All of that part of the Fenis Robinson league of land claimed by S. W. March is under a good
223 rail and wire fence. As I have stated heretofore, fifteen (1500) hundred acres of said land is in cultivation; about 8 or 10 good tenant houses, horse lots, cow pens, and other improvements necessary on a farm. The improvements were put there at the instance of S. W. March and W. G. Salmon. They were very good farm improvements. I can't remember the year when each improvement was put there. The present value of the improvements is about forty (40,000.00) thousand dollars.

To 13 X Int. witness answers: As I have already previously stated, I never saw said land certificate, nor do I know anything about whose possession it was in or Dennis Trammel's connection with it. I don't know where Dennis Trammel lived at that time. I never had any correspondence with Dennis Trammel about anything. I never saw Dennis Trammel.

To 14 X Int. witness answers: I never saw the certificate in the possession of J. P. Dumas. If Dumas ever had said certificate I never knew it. I know nothing about Dumas' connection with said certificate, nor do I know anything about Dennis Trammel's connection with it.

To 15 X Int. witness answers: I know nothing about the certificate being returned to the land office, nor do I know anything about its location in Grayson county or Dumas' interest in it. I don't know anything about the removal of the certificate from Grayson county.

To 16 X Int. witness answers: I know that S. W. March built a dwelling-house. I don't know on what survey the house is built. The house is built in a very good location. I never heard Dr. March say that he was dissatisfied with his title. I never heard Dr. March make any statement about the house at all. The improvements put on the land previous to the death of Dr. S. W. March were of a good substantial character and not of a cheap and
224 inferior nature. I never heard Dr. March say that he was dissatisfied with his title or that his title was bad or that his title was disputed.

R. D. HORTON.

225 *Answers to Interrogatories Propounded to Sandy Horton, a Resident of Montague County.*

To 1st Int. witness, SANDY HORTON, answers as follows: My name is Sandy Horton. I am 33 years old. I live in Burlington, Montague county, Texas.

To the 2nd Int. witness answers: I knew Squire W. March. I became acquainted with him in 1873, and I knew him from then up to the time of his death.

To 3rd Int. witness answers: I know the Fenis Robinson survey. It is situated about one mile west of Burlington, in Montague county, Texas, on Red River.

To the 4th Int. witness answers: I live about one mile from the

said land. I have lived there about nine years. I have known the land nine years.

To the 5th Int. witness answers: I know the land claimed by George Dugan as his locative interest. It is situated in the northwest corner of said Fenis Robinson survey. George Dugan has claimed said locative interest. S. W. March has claimed the balance of the said survey since I have known the said land.

To 6th Int. witness answers: That part of the land claimed by S. W. March has been occupied. Norton and Sons and A. B. White and Sons went on the land in 1872, and I as one of the Horton Brothers went on the land in the year 1873. The said land has been occupied ever since up to the present time, and is now occupied.

226 To Int. the 7th witness answers: Norton and Sons & A. B. White and Sons first occupied the land. They made a crop in the year 1872. Those parties occupied the land for five years. They occupied the land as tenants of S. W. March. We, as Horton Brothers, occupied the land as tenants of S. W. March.

To the 8th Int. witness answers: The land was first occupied in 1872 by Norton & Sons & A. B. White & Sons, and in 1873 the Horton Brothers went on the land. The Nortons & A. B. White & Sons and the Horton Brothers occupied the land for five consecutive years, beginning in 1872 & 1873, and after the expiration of their time the said land has been occupied by various tenants up to the present time. The names and time of each tenant I cannot remember. They all held as tenants of S. W. March and W. G. Salmon, the son-in-law of S. W. March. I have stated all that I know about the occupancy of said land.

To the 9th Int. witness answers: The land has been occupied since the death of S. W. March by various tenants. From the death of S. W. March up to the present time they claimed to occupy the land as tenants under W. G. Salmon, the son-in-law of S. W. March.

To 10th Int. witness answers: When I first knew the land it was unimproved. The said land is now improved. The land is under a good rail and wire fence; 8 or 10 tenant houses, 8 or 10 wells, cow pens, horse lots, and other improvements, and about one thousand acres under cultivation. The improvements were placed on the land at the instance of S. W. March and W. G. Salmon. They have been put there off and on since 1872 to the present time. The present nature of the improvements are good.

227 To 11th Int. witness answers: About one thousand acres of land is in cultivation. The land has been in cultivation from 1872 up to the present time. The land has been cultivated by various tenants of S. W. March and W. G. Salmon. The parties who leased the land for the first five years paid no rent. The parties leasing the land for the first five years got the use of the same for the improvements they put on it. The tenants who went on the land after the expiration of the leases paid rent to W. G. Salmon and J. W. Brown, agent of S. W. March.

To the 12th Int. witness answers: The present cash value of the

land, without any improvements upon it, would be worth about three dollars per acre. The present value of the land, with the improvements on it, would be worth ten dollars per acre.

To the Int. 13th witness answers: I have stated every fact that I now remember that would be of material advantage to either party in this suit.

SANDY HORTON.

Answers of said Witness, Sandy Horton, to Cross-Interrogatories.

To 1st X Int. witness answers: My age is 33; I reside in Burlington, Montague county, Texas. I am not a party to nor am I interested in this suit, nor am I related to any persons interested in this suit.

To the 3rd X Int. witness answers: I know nothing of said certificate. I never saw it nor do I know anything with regard to the said certificate or its transfer or anything about any paper being attached to it, nor do I know anything else with regard to said certificate.

228 To the 4th X Int. witness answers: In my answer to X interrogatory the 3rd I stated I knew nothing about the certificate, nor do I know anything about its transfer or any paper attached to it or anything else about said certificate.

To the 5th X Int. witness answers: As I have before stated, I know nothing about the certificate. I know nothing about how S. W. March came in possession of said certificate, nor anything whatever of his transaction with it or about the said certificate or how he became in possession of it or what disposition was made of it. The fair market value of the Fenis Robinson land now, with the improvements on it, is worth ten dollars per acre.

To the 6th X Int. witness answers: I think he was an educated man—he was a "docter." I don't know what his age was when he bought the certificate, for I know nothing about him buying it. I don't know whether he was a cautious trader or not. He was said to be a man of considerable property. I don't know whether he was a successful business man or not. I took him to be a man of more than ordinary intelligence. I don't know whether he was a man of great business capacity or not. I know nothing about the certificate or S. W. March's connection with it anyway whatever, nor about its return to the land office.

To the 7th X Int. witness answers: I never saw it and I never examined the said certificate.

To the 8th X interrogatory witness answers: I know nothing of any sale or any transfer of said certificate. I don't know whether the leases were in writing or not. My older brother made the contract with the agent of S. W. March with regard to the lease

229 of the land that we occupied. It was all valley land. The land lies one mile west of Burlington, in Montague county, Texas. The land is bounded on the north by Red River, on the east by the Thomas Scott and some other survey, and on the south and west by a number of little surveys. The leases were given for five

years. The parties leasing the land held under S. W. March. The parties leasing went on it and cultivated, holding under S. W. March, commencing in 1872 and ending in 1877 and 1878. I know this from having lived on the land myself. The lessees lived on the land in controversy—each lessee heretofore mentioned by me lived on the land in controversy. The lessees did not live — adjoining surveys, but they lived on the Fenis Robinson survey.

To the 9 X Int. witness answers: It is not a fact that only a small portion of the land has been occupied by the tenants of S. W. March. I don't think the part claimed by G. C. Dugan has ever been occupied. S. W. March has held possession of his land through his tenants. The metes and bounds of each one I do not know. I know this from having cultivated the land myself as tenant of S. W. March.

To the 10th X Int. witness answers: The land claimed by March, with the improvements, is worth ten dollars per acre; that claimed by Dugan about three dollars per acre.

To the 11th X Int. witness answers: I don't know the anual rental value of the land actually occupied and enclosed.

To the 12th Int. witness answers: The improvements are as follows: The land has a good rail & wire fence around it; 8 or 10 tenant-houses, eight or ten wells, cow pens, horse lots, and other improvements necessary about a farm-house, besides one
230 thousand acres in cultivation. The improvements were placed on the place by different parties at the instance of S. W. March and W. G. Salmon. The improvements were placed on the land from the year 1872 up to the present time. The improvements are worth twenty thousand dollars, that being their present value.

To the 13th X Int. witness answers: I know nothing about the certificate. I know nothing about Dennis Trammel, nor do I know anything about his connection with the said certificate, his buying or selling, or anything else about it. I had no correspondence with Denis Tramel nor no other connection with him in any way, nor do I know where the certificate was May 12th and June the 23, A. D. 1855.

To the 14th X Int. witness answers: I never saw the certificate in the possession of J. P. Dumas or any one else, nor did I ever have any conversation with him about the certificate, nor do I know it was ever under his control, nor did he ever tell me anything about the certificate or any transfer on the back of said certificate. I know nothing about Denis Tramel's connection with the certificate.

To the 15th X Int. witness answers: I don't know when the certificate was returned to the general land office. I know nothing about the Fenis Robinson certificate having been located in Grayson county. I know nothing about J. P. Dumas' having the certificate for location. I know nothing of J. P. Dumas' interest in the certificate. I know nothing about the removal of the certificate from Grayson county, Texas.

To the 16th X Int. witness answers: I don't know on what survey the dwelling-house is on. The house is built in a very good

place. If S. W. March was dissatisfied with his title I never
231 heard him say anything about it. I never heard him state that he was dissatisfied with his title. The improvements were good, substantial farm improvements. I never heard S. W. March express any doubt as to his title to the land, nor did I ever hear him say that he was going to put cheap improvements on the land, for he doubted his title to the same.

SANDY HORTON.

232 *Answers to Interrogatories Propounded to John Horton.*

To the first interrogatory the said witness, JOHN HORTON, answers as follows: My name is John Horton; my age is 39 years. I reside at Burlington, Montague county, Texas.

To 2nd Int. witness answers: I know Squire W. March. I knew S. W. March in the year 1874, and knew him from that time until he died. I knew S. W. March in Montague county, Texas.

To 3 Int. witness answers: I knew the land, and I know where it is situated.

To 4th Int. witness answers: I reside one mile and a half from said land. I have been living there and on the land together about 8 years. I have known the land about 8 years.

To 5 Int. witness answers: I know the 1,000 acres claimed by George Dugan. It is situated in the northwest corner of said survey. Dugan has claimed said locative interest. S. W. March has claimed the balance of said survey since I have known the land.

To 6th Int. witness answers: That part of the survey claimed by S. W. March has been occupied. I went on the land in the spring, 1873, and there were tenants on the land when I went on it. I think the two tenants who were on the land before I went on it had been there over a year. The occupancy commenced on the Fenis Robinson survey, the part owned by S. W. March. The
233 occupancy commenced some time in the year 1871, and has been kept up from that time to the present time, and the land is now occupied.

To 7 Int. the witness answers: Norton and Sons first occupied the land. They occupied the land 5 years. They occupied the land as tenants under S. W. March.

To 8 Int. witness answers: The land was first occupied by Norton and Sons. Horton and Brothers occupied it for the first 5 years, and the land has been occupied each year from that time to the present by various tenants, whose names I cannot remember. All of the tenants have occupied and held the land as tenants under S. W. March and W. G. Salmon, the son-in-law of S. W. March. I have already stated all I know about the occupancy of said land that would be of benefit to either party to this suit.

To 9th Int. the witness answers: The land has been occupied since the death of said S. W. March. It has been occupied by various tenants. I cannot give their names. They have claimed since the death of S. W. March as tenants under W. G. Salmon, the son-in-law of S. W. March.

To 10th Int. witness answers: When I first knew the land there was some improvements on it. The said land is now improved. There is 1,200 acres or more in cultivation; the balance of it is in pasture. The whole of the land owned by March is under a good rail and wire fence. There are 9 or 10 tenant-houses on the land and six or 8 wells on the land. There are cow lots, horse lots, calf pens on the land. The improvements were made on the land. The nature of the improvements are good.

234 To 11th Int. the witness answers: 1,200 acres or more of said land has been cultivated. I know some of the land was cultivated in 1872. A portion of said land was put in cultivation in 1873; the balance of the 1,200 acres was put in cultivation in 1874. Said land has been in cultivation every year since to the present time. The land has been cultivated by various tenants, whose names I do not remember. For the first 5 years the land was leased to certain parties, and they were to have the use of said land for a specified amount of improvements they were to put upon it. From the expiration of said leases up to the present time rent has been paid by the tenants to S. W. March or his agents and to W. G. Salmon, the son-in-law of S. W. March.

To Int. 12th witness answers: The present cash value of the land without any improvements upon it would be three or three dollars and a quarter per acre. That part of the Fenis Robinson survey, owned by S. W. March, with all the improvements that is on it, is worth sixteen dollars per acre.

To 13 Int. witness answers: I have stated all I know in regard to the matter that would be of advantage to either party to this suit.

JOHN HORTON.

To cross-interrogatories the witness, JOHN HORTON, answers as follows:

To 1st X Int. the witness answers: My age is 39 years. I reside in Burlington, Montague county, Texas. I am not a party to nor am I in any way interested in this suit, nor am I related to any one who is interested in this suit.

To 2nd X Int. witness answers: I never saw the Fenis Robinson land certificate in the possession of any one, nor do I know what was being done with it.

235 To 3rd X Int. the witness answers: As I have before stated, I never saw the certificate, nor do I know anything about its transfers or endorsements, nor do I know anything about any paper or substance being attached to it or fastened on it so as to obscure its transfer. I know nothing about said certificate being returned to the land office.

To 4th X Int. witness answers: I have already stated that I have never seen the land certificate spoken of nor do I know anything about it whatever.

To 5th X Int. witness answers: I know nothing about Dr. March buying the said certificate, nor do I know anything about his deeds or when or where he got them. The fair market value of the part of the land owned by S. W. March without the improvements on it

is worth nine or ten thousand dollars, and with the improvements on it it is worth about fifty-two thousand dollars. G. C. Dongan's interest in said land is worth about six or seven thousand dollars.

To 6th X Int. the witness answers: I think S. W. March was an educated man. He was called a doctor. I know nothing about S. W. March purchasing the certificate or his age at the time he purchased it. I know nothing about his ability as a trader. He was a man of property and a successful business man so far as I know. I think he was a man above ordinary intelligence. I don't know whether he was a man of great capacity for business or not. I know nothing about S. W. March's connection with the certificate, nor do I know who did have the said certificate in possession. I am unable to state anything about said certificate, as I knew nothing of it.

236 To 7 X Int. witness answers: I never saw or examined the certificate.

To X Int. 8th the witness answers: In answer to direct interrogatories I made no statement about any sale or transfer of said land certificate or any land located by it. I know the lease taken by Horton Brothers was in writing. I cannot attach a copy of the lease hereto. The leases were taken on good valley land. The land lies on Red River, in Montague county, one mile west of Burlington. The said land is bounded on the north by Red River, on the east by Thomas Scott survey. I don't know how it is bounded on the south and west. The leases were given for 5 years. The leases were taken and held by Horton Brothers and Norton & Sons as tenants under S. W. March. Horton's lease began in 1873. The Nortons' lease began in 1871. I know from having been one of the tenants myself. The said tenants lived on the land in controversy.

To 9 X Int. witness answers: It is not a fact that a small portion of said land has been occupied by S. W. March, for almost all of the valley land on said tract owned by S. W. March has been and is in cultivation. The portion of said land owned by Dugan has never been occupied. S. W. March's part of said land was first occupied by the Nortons and Hortons. I cannot give the metes and bounds, more than our leases was in the valley on the Fenis Robinson league and embraced about 1,200 acres. I was one of the tenants. The leases were written.

To 10 X Int. the witness answers: The present market value of said league of land as it is to-day is about fifty-nine or sixty thousand dollars.

To 11 X Int. witness answers: I don't know what the annual rental value of said land is.

237 To 12 X Int. witness answers: Almost all the land claimed by S. W. March is under a good rail and wire fence. There is about 3,000 acres of said land enclosed. There are 9 or 10 good tenant-houses, one fine dwelling, horse lots, wells, cow-pens, and other improvements necessary on a farm on said land, and there is 1,200 acres or more of said land in good state — cultivation. The improvements was put there by tenants of S. W. March and by S. W. March and W. G. Salmon. I can't state what year each of the

improvements were put there. The present value of the improvements on the Fenis Robinson land is forty-two or forty-three thousand dollars.

To 13 X Int. witness answers: I never saw the Fenis Robinson certificate nor I never heard of it. I know nothing about Dennis Trammel or his connection with the certificate. I don't know where Dennis Trammel lived. I never had any correspondence with Dennis Trammel about anything. I don't know where the certificate was May 12th, 1855, and June 23rd, 1855.

To 14th X Int. witness answers: I never saw the certificate in the possession of J. P. Dumas. If Dumas ever had said certificate I know nothing of it. Dumas never told me anything about the certificate or the transfer of the same. I new saw Dennis Trammel. I never conferred with him about the certificate or he with me.

To 15 X Int. witness answers: I know nothing about said certificate being returned to the land office. I know nothing about the certificate being located in Grayson county, Texas. I know nothing about the removal of said certificate from Grayson county, nor do I know anything else about the certificate or about what was done with it.

238 To 16 X Int. the witness answers: I don't know that S. W. March built a residence on the Scott survey and on a less eligible spot than he could have found on the Fenis Robinson survey. According to my information the house is on the Fenis Robinson survey. I consider the place where the house is built a very nice place for a residence. I never heard Dr. March say that he doubted his title to the Fenis Robinson land. I never heard Dr. March make a statement with regard to his title being bad to said land. The improvements put on the land previous to the death of S. W. March were good, substantial improvements. I never heard Dr. March say that his title to the Fenis Robinson land was dissatisfactory or disputed in my life.

JOHN HORTON.

239 *Answers to Interrogatories Propounded to J. W. Rich.*

To the 1st Int. the said witness, J. W. RICH, answers as follows: My name is J. W. Rich. My age is 58 years. I live in Burlington, Montague county, Texas.

To the 2nd Int. witness answers: I was acquainted with Squire W. March. I knew him about 3 or 4 years before his death.

To the 3rd Int. he answers: I know the Fenis Robinson survey. It is situated one mile west of the town of Burlington, in Montague county, Texas.

To the 4th Int. he answers: I reside one mile from the said land. I have lived there 10 years. I have known the survey ever since I have been here.

To 5th Int. he answers: I don't know where the land that is claimed by George Dugan is situated. I don't know who has claimed the Dugan interest. S. W. March has claimed the balance of the Fenis Robinson survey since I have known said land.

To the 6th Int. he answers: That part of the survey claimed by S. W. March has been occupied. It was first occupied 9 or ten years ago. It was continued from that time up to the present. It is now occupied.

To the 7th Int. he answers: I think that Norton & Sons first went on the land. They stayed about five years. They occupied the land by building houses & fences and cultivating and living
240 on the land. They occupied the land as tenants of S. W. March.

To the 8th Int. he answers: The land was first occupied about 9 or 10 years ago and has been occupied ever since to the present time, but the names of the various occupants I do not know. The occupants claimed the land as tenants of S. W. March & W. G. Salmon, a son-in-law of S. W. March. I have stated how the land was occupied as well as I now remember.

To the 9th Int. he answers: It has been occupied since the death of S. W. March by various persons as tenants under W. G. Salmon, the son-in-law of S. W. March. The land has been occupied about 9 or 10 years.

To the 10th Int. he answers: When I first knew the said land it was unimproved. The said land is now improved. Nearly all of the land is now under a good rail & wire fence. There is a good many houses on the land, but how many I do not know, besides other improvements, but I don't know how much. The improvements were placed there at the instance of S. W. March and W. G. Salmon. The improvements are in very good fix.

To the 11th Int. he answers: A part of said land has been cultivated. I do not know how much; a fine chance of it, though. The land has been in cultivation for 9 or 10 years. The first tenants that occupied the land paid rent by making so much farm for the use of it, and after that the land was rented out for so much of the crop. The tenants paid rent to March & Salmon.

To the 12th Int. the witness answers: The present cash value of the land is three or three dollars and twenty-five cents per
241 acre. The present cash value of the land with the improvements is ten dollars per acre.

To 13th Int. he answers: There is nothing more that I know of that would be of any value to anybody interested in this suit.

J. W. RICH.

Answers of said Witness, J. W. Rich, to Cross-Interrogatories.

Answer to first cross-interrogatory. I am 58 years old. I reside in Burlington, Montague county, Texas. I am not a party to this suit, nor am I in any way interested in it. I am not related to any one who is a party to this suit.

To X Int. 2nd he answers: I never saw the Fenis Robinson land certificate. I never saw anything done with it, and don't know anything about it.

To the 3rd X Int. he answers: I never saw said land certificate, nor do I know anything about any of its transfers or any paper or any-

thing being attached to it, nor do I know anything about the certificate being returned to the land office of Texas. I know nothing about the condition of certificate when it was returned to the general land office or about a piece of paper or any substance attached to it.

To the 4th X Int. he answers: I know nothing about the certificate or about any transfer on the certificate or any indorsements on it or papers pasted over it or anything else with regard to its transfers, the paper around it, or anything else pertaining to it whatever.

242 To the 5th X Int. he answers: I have already stated that I know nothing whatever with regard to the certificate. The fair market value of the Fenis Robinson land claimed by S. W. March, with the improvements on it, is ten dollars per acre.

To the 6th X Int. he answers: I don't know anything about S. W. March's education. I don't know whether he had a profession or not. I know nothing about his purchasing the certificate or what age he was. I know nothing about S. W. March as a trader. I don't know whether he was a man of property or not. I don't know whether or not he was a successful business man. I don't know whether he was above ordinary intelligence or not. I don't know whether he was a business man or not. I know nothing about the certificate. I don't know anything about the possession of the certificate, nor do I know anything about its being returned to the land office.

To the 7th X Int. he answers: I never saw the certificate, nor I never examined it.

To the 8th — Int. he answers: I know nothing about the sale or transfer of the certificate or anything about the certificate, nor do I know anything about the title of the certificate. I don't know whether the leases of said land was written or verbal. The land leased was valley land. The land lies one mile west of Burlington, in Montague county, Texas. I don't know how it is bounded. My understanding was the leases was for five years. Possession was taken and held by parties as tenants under S. W. March & W. G. Salmon. The leases began in 1872 and lasted for five consecutive years. My means of knowing was that I lived here at that time. The tenants lived on the land in controversy and not on adjoining surveys. I don't remember all of the names of said tenants.

243 To the 9th X Int. he answers: It is not a fact that a small portion of the land has been occupied by S. W. March, but a good large portion of it has been occupied. Nearly all of the land has been occupied since 1872. I think that Dugan's part has been unoccupied. Marche's land has been occupied by tenants claiming under him and W. G. Salmon. I cannot give the metes and bounds of each tenant. My means of knowing was because that I lived here at the time. I don't know whether the leases were written or verbal.

To the 10th X Int. he answers: The part claimed by S. W. March with improvements is worth ten dollars per acre. The balance of the league is worth three dollars & twenty-five cents per acre.

To the 11th X Int. he answers: I don't know what the annual

rental value of the said land would be that is actually occupied and enclosed.

To the 12th X Int. he answers: There is probably a thousand acres in cultivation. Nearly the entire part owned by March is fenced. There are a number of tenant-houses on it and other improvements, but I don't know much. The improvements put on the land was done by tenants under S. W. March and Salmon; but I don't know the names of the tenants, nor do I know the particular character of each tenant's improvements nor the years they placed them. The present value of the improvements is $21,000.00.

To the 13 X Int. he answers: I don't know anything about the certificate. I don't know where it was May 12th and June the 23, A. D. 1855, nor do I know Dennis Tramel; consequently I cannot answer any of the questions propounded to me in cross-interrogatory the 13th.

244 To the 14th X Int. he answers: I never saw the certificate in the possession of J. P. Dumas, nor did I ever hear him say that he had it, nor was I ever informed he had it, nor did I ever know it to be in his possession or under his control, nor did I know he had anything to do with it, nor did he ever tell me anything about it. If Dennis Tramel ever had anything to do with the certificate I don't know it. I never saw Dennis Tramel. I don't know him.

To the 15th X Int. he answers: I know nothing about the certificate being returned to the land office. I know nothing about the certificate being located in Grayson county, nor about J. P. Dumas having it for location in Grayson county or anywhere else, nor anything about his interest in it, nor anything about the certificate being removed from Grayson county.

To the 16th X Int. he answers: I do not know that S. W. March built a house on the Scott survey. The house is built in a very nice place. I do not know that S. W. March ever refused to build a house on the land in contest because he was dissatisfied with his title. I never heard S. W. March make the statement that he was dissatisfied with his title to the land. The improvements placed upon the land before the death of S. W. March were good, stout, and substantial improvements and not cheap and inferior. I never heard S. W. March say that this title to the land was unsatisfactory or that his title was disputed by any one.

J. W. RICH.

245 *Answers to Interrogatories Propounded to James P. Stone.*

To the first interrogatory the witness, JAMES P. STONE, answers as follows: My name is James P. Stone; my age is 31 years; Burlington, Montague county, Texas.

To 2nd Int. the witness answers: I knew Squire W. March; I knew him in 1876 or 1877; I have known him ever since to his death.

To 3rd Int. the witness answers: I know the Fenis Robinson land;

it is situated about one mile west of Burlington, Montague county, Texas.

To 4th Int. witness answers: I live about one mile east of said land; I have lived there 9 years; I have known the land 8 or 9 years.

To 5 Int. witness answers: I know where the 1,000 acres claimed by George Dugan is situated. George Dugan has claimed said locative interest far as I know. S. W. March has claimed the balance of said survey since I have known it.

To 6 Int. witness answers: That part of the Robinson survey claimed by S. W. March has been occupied. It was first occupied in 1874 or 1875, to the best of my recollection. The occupancy has continued from 1874 to the present time; it is now occupied.

To 7 Int. witness answers: I can't state, for I don't recollect who first occupied the land. I don't know how long any one oc-
246 cupied it, with the exception of Hortons; they occupied it 5 years. My understanding is they, the Hortons, leased it from March. They held under March.

To 8 Int. witness answers: I cannot commence at the time when said land was first occupied and state who has occupied it each year to the present time, and since that time all of the tenants who occupied said land claimed to hold as tenants under S. W. March and W. G. Salmon, the son-in-law of S. W. March. I have stated as fully with regard to the occupation of said land as I can well do.

To 9 Int. witness answers: Said land has been occupied since the death of S. W. March by various parties. From the death of S. W. March to the present time the land has been occupied by various parties. They were tenants of W. G. Salmon, son-in-law of Dr. March.

To 10 Int. witness answers: When I first knew said land it was unimproved. The said land is now improved. It is under fence, has tenant-houses, lots, wells, cow pens, and other improvements on a farm. The improvements were made on the land in controversy. The improvements are good so far as I know.

To 11 Int. witness answers: A part of said land is in cultivation; I don't know how much. It has been cultivated from 1874 to the present time. It has been cultivated by various parties. For the first 5 years it was leased for the improvements. Since that time the tenants have paid rent to March's agents and W. G. Salmon.

247 To 12th Int. witness answers: That part of the land claimed by S. W. March is worth three dollars and a half per acre without the improvements on it, and with the improvements the land is worth ten dollars per acre.

To 13 Int. witness answers: I have stated everything that I know that would be of material advantage to either party to this suit.

J. P. STONE.

To cross-interrogatories the witness, JAMES P. STONE, answers as follows:

To the 1st X Int. the witness answers: My age is 31 years; I.

reside in Burlington, Montague county, Texas; I am not interested in this suit; I am related to no one who is.

To 2nd X Int. witness answers: I never saw the Fenis Robinson land certificate, and don't know what was done with it or whose possession it was in.

To 3 X Int. witness answers: I have never seen the Fenis Robinson land certificate, nor do I know anything about whose possession it was in, what condition it was in, or anything else whatever that pertains to it or what was being done with it or how it was used.

To 4 X Int. witness answers: As I have already stated, I know nothing whatever about said certificate.

To 5 X Int. witness answers: I cannot answer anything in the 5 cross-interrogatory except with regard to the value of the
247¼ land, which is as follows: The fair market value of said land without the improvements on it is three dollars and a half per acre; the value of that improved is ten dollars per acre.

To 6 X Int. witness answers: I don't know whether March was educated or not; they called him Doctor. I know nothing about his af— at the time or about the certificate. I know nothing of his trading qualities. I don't know whether he was a man of property or not. I don't know whether he was a successful business man or not. I suppose he was a man above ordinary intelligence. I don't know anything about his capacity for business. I know nothing about the certificate or its being returned to the land office.

To 7 X Int. witness answers: I never examined the certificate.

To 8 X Int. witness answers: As I have above stated, I know nothing of the certificate. The leases on said land were in writing. I cannot procure a copy of the leases. The leases were in good valley land. The land lies on Red Run, one mile west of Burlington. It is bounded on the north by the river; on the east by Thomas Scott survey. I can't bound the other two sides. The leases were given for 5 years. Possession was taken and held by tenants under Dr. S. W. March from 1874 to the present time. I know from living near the land. The lessees lived on the land in controversy and not on adjoining surveys.

To 9 X Int. witness answers: A good portion of the land has been occupied. Nearly all of the land owned by Dr. S. W. March is under fence. That part owned by G. C. Dugan has never been occupied. I cannot remember the names of all the tenants.
247½ March's part have been occupied from 1874 to the present time. I cannot give the metes and bounds of each. March's was under a written lease.

To X Int. 10 witness answers: Without improvements the land is worth three dollars and a half per acre; that part improved is worth ten dollars per acre.

To 12 X Int. witness answers: I cannot give a full statement of the improvements on the land. I don't know the number of acres enclosed; it is enclosed under a rail and wire fence. I can't state as to the buildings on the land. March and Salmon put the improvements on said land. I can't give the character of each per-

son's improvements nor the year when put there nor the value of the same.

To 13 X Int. witness answers: I cannot answer any question asked in cross-interrogatory number 13.

To 14 X Int. witness answers: As I have already stated, I know nothing about the certificate, nor can I answer any question asked with regard to the certificate in any shape, manner, or form.

To 15 X Int. witness answers: I cannot answer a single question asked me in cross-interrogatory number 15.

To 16 X Int. the witness answers: I don't know that March built a house on a less eligible spot than he could have found on the Fenis Robinson survey. The house is on the Thomas Scott survey.

I don't know that Doctor March was dissatisfied with his
248 title to the land in controversy. I did not hear Dr. March make a statement to that effect. I know nothing about the houses and improvements put on the land previous to the death of Dr. March being of a cheap and inferior character. I never heard Dr. March say that his title to the land was unsatisfactory or disputed.

J. P. STONE.

249 *Answers to Interrogatories Propounded to Witness J. W. Deavenport.*

To the first interrogatory the said witness, J. W. DEAVENPORT, answers as follows:

To the first Int. he answers. My name is J. W. Deavenport; my age is 33 years. I reside in Burlington, Montague county, Texas.

To the 2nd Int. the witness answers: I knew Squire W. March. I first became acquainted with him in the year 1873. I knew him from that time until he died. I knew him in Montague county, Texas.

To the 3rd Int. witness answers: I know the Fenis Robinson survey; it is on Red River, in Montague county, Texas, about one mile west of the town of Burlington.

To the 4th Int. witness answers: I reside about one mile from said land; have lived there for the period of five years. I have known the said land for twelve years.

To the 5th Int. witness answers: I know where the George Dugan locative interest is; it is in the northwest corner of said survey. George Dugan has claimed the locative interest. S. W. March has claimed the balance of the said survey.

To the 6th Int. witness answers: That part of the survey claimed by S. W. March has been occupied; it was first occupied in the year 1873, and the occupancy has continued uninterrupted from 1873 up to the present time; it is now occupied.

250 To the 7th Int. the witness answers: Norton and Sons first occupied the land. They occupied the land about four years. Horton Brothers also occupied a part of the land. They took their lease after the Nortons. All of said parties held said land under a lease from S. W. March. A. B. White and Sons held under a lease

also from S. W. March. They went on the land before the Horton Brothers.

To the 8th Int. witness answers: The land was first occupied in 1873 and was held by said parties, as answered in interrogatory 7th, until 1879. W. G. Salmon, the son-in-law of S. W. March, then took charge of said land, and he has been renting to different parties from 1879 to the present time. The said land has been occupied every year from 1873 to the present time, and the occupants claimed under a lease from S. W. March up to 1879, and from that time to this the land has been occupied by tenants holding under the said Salmon.

To the 9th Int. the witness answers: The land has been occupied since the death of S. W. March. It has been occupied by various tenants since the death of Dr. S. W. March to the present time. They claimed to occupy the land as tenants of W. G. Salmon, the son-in-law of S. W. March.

To the 10th Int. witness answers: When I first knew the said land it was unimproved. It is now improved. The entire survey claimed by S. W. March is under a good rail and wire fence, and some 8 or 10 good tenant-houses and 8 or 10 good wells, lots, cow pens, and other improvements. There is one thousand acres in cultivation. The improvements were made at the instance of S. W. March and W. G. Salmon. The improvements are worth about $39,600.00. The improvements are in good condition.

251 To the 11th Int. he anwers: About one thousand acres of said land has been cultivated. It has been in cultivation from the year 1873 to the present time. The parties that leased the land from S. W. March paid no rent for the first five years. They had the use of the land for five years for the improvements they placed upon it. From the time the leases expired J. W. Brown & W. G. Salmon, as the agents of S. W. March, have collected the rents up to the present time.

To the 12 Int. he answers: The present cash value of the land without any improvements is three (3) dollars per acre, and with the improvements that are now on the land it would be worth fifteen (15) dollars per acre.

To the 13th Int. he answers: I think that I have stated everything that would be of material advantage to either party in this suit.

J. W. DAVENPORT.

Answers of said Witness, J. W. Deavenport, to Cross-Interrogatories.

To 1st X Int. the witness answers: My age is 33 years. I reside in Burlington, Montague county, Texas. I am not a party to this suit. I am in nowise interested in it nor am I related to any person interested in this suit.

To the 2nd X Int. witness answers: I have never seen the Fenis Robinson land certificate.

To the 3rd X Int. witness answers: I never saw said land certificate nor do I know anything about it being returned to the general

land office at Austin, having never seen said certificate; consequently I know nothing about it.

252 To the 4th X Int. witness answers: I never saw the said certificate; therefore can give no description of it.

To the 5th X Int. witness answers: I know nothing about S. W. March locating the certificate, nor do I know how he claimed or came in possession of it or whether he paid for it or not, nor how much he paid, if anything, nor where the certificate was when he purchased it, if he purchased at all. The land is worth about $48,000.00 or $49,000.00, including the land and improvements.

To the 6th X Int. witness answers: S. W. Marsh was an educated man. He had a profession. He was a doctor. I know nothing about S. W. Marsh purchasing the certificate or it being purchased for him, nor his age at the time he got the certificate, for I don't know when he got it. I don't know whether or not he was a cautious trader. He was reputed to be a man of property. I don't know whether he was a successful business man or not. He was a man above ordinary intelligence. I know nothing of his business capacity. I am unable to state anything about S. W. March's connection with the certificate, as I never saw the certificate and therefore can know nothing of its history.

To the 7th X Int. witness answers: I know nothing of the certificate; never saw it; consequently could not have examined it.

To the 8th X Int. witness answers: I know nothing about any sale or transfer of any land certificate. I know nothing about the sale of any of the land located by said certificate. S. W. March leased some of the land to Norton & Sons and to Horton

253 Brothers and A. B. White and Sons, which leases, I have understood, were in writing; but I never saw them and I cannot attach a copy to this answer. The land leased was valley land. The land lies one mile from Burlington, in Montague county, Texas; it is bounded on the north by Red River and on the east by Thomas Scott survey, and is bounded on the south and west by various small surveys, the names of which I cannot now remember. Each lease was given for 5 years. The lessees held under S. W. Marsh, and from the year 1873 to 1879. I know it from having lived near it. They all lived on the Fenis Robinson survey.

To the 9th X Int. witness answers: About one-third of the land has been occupied at the instance of S. W. Marsh, and within a year the entire survey has been fenced. I don't think the part claimed by Dugan has ever been occupied. S. W. March has occupied his part of the land. The reason I know this is from living near it. I have understood that S. W. Marsh had a written lease with all his tenants.

To the 10th X Int. witness answers: The present market value of said land owned by March is forty-eight or forty-nine thousand dollars; the part owned by Dugan, thirty-five hundred dollars, to wit, one thousand acres.

To the 11th X Int. witness answers: I don't know the annual rental value of the land actually occupied and enclosed.

To the 12th X Int. witness answers: I have fully stated the answer

to this question in my answer to direct interrogatory the 10th, with this exception, that I do not know the names of the individuals who placed the improvements on the land; but I do know that the said improvements were placed on the land at the instance of S. W. March and W. G. Salmon.

254 To the 13th X Int. witness answers: I never saw the Fenis Robinson certificate in the possession of any one, nor do I know anything about it, nor do I know Denis Tramel, nor did I ever hear of such an individual until interrogated in reference to him in this suit. I have had no correspondence with Denis Trammel. If Denis Trammel ever purchased the said certificate or owned or controlled or ever had the same in his possession I don't know nothing of it. I don't know where the certificate was on May the 12th and June the 23rd, A. D. 1855.

To 14th X Int. witness answers: I never saw said certificate in the possession of J. P. Dumas. If he ever had the certificate in his possession I know nothing about it. I never heard him say he had it in his possession, nor was I in any way ever informed by any one that J. P. Dumas had such certificate in his possession. If J. P. Dumas ever had the certificate in his possession or under his control I know nothing of it. He never told me anything about the certificate or about the transfer on the back of the certificate. I never had a conversation with J. P. Dumas about the certificate at any time. If Dennis Tramel ever had said certificate in his possession or controlled the same in any way I never knew it. I never conferred with Dennis Tramel, nor he with me, about the said certificate. I don't know Dennis Tramel. I never saw him.

To the 15th X Int. witness answers: I don't know how long the certificate was located on the land before it was returned to the general land office. I know nothing about the certificate having been located in Grayson county. If it was ever located in Grayson county I don't know it. If J. P. Dumas ever had the certificate for location in Grayson county I know nothing of it. If said certificate was ever located by him in Grayson county, Texas, and if he ever claimed an interest in the land by reason

255 of the location of the certificate in Grayson county, Texas, I know nothing of it. If the certificate was ever located in Grayson county, Texas, I know nothing of it. If the certificate was ever located in Grayson county, Texas, and removed from the location in that county I know nothing of it, for I am not aware that it was ever located in Grayson county, Texas.

To the 16th X Int. witness answers: I know that S. W. March built a residence or dwelling on the Fenis Robinson survey and not on the Thomas Scott survey. I don't think he could have found a more eligible spot to have built the house than where it now stands. I never heard S. W. March express any doubts as to his title to the land. I never heard him make any statement wherein he expressed any fears as to his title to said land. The improvements placed on the land previous to the death of S. W. March were about as good as could have been placed there at that time. The houses were good ordinary houses, as well as the other improvements, and the resi-

dence he, S. W. March, built for himself is about as good as any house in the county. I know it was the aim of S. W. March, from hearing him talk, to place upon the said land the very best improvements he could get there. I never heard him express a doubt to his title to the land or that his title to said land was disputed by any one.

J. W. DAVENPORT.

256 *Answers to Interrogatories Propounded to William Wilson.*

To the 1st interrogatory the said witness, WILLIAM WILSON, answers as follows: My name is W. L. Wilson; I am 54 years old; I live in Montague county, Texas.

To the 2nd Int. he answers: I knew Squire W. March. I met him at my house. I knew him 12 years ago.

To the 3rd Int. he answers: I know the Fenis Robinson survey. It joins my land on the east. The land is situated in Montague county, Texas.

To the 4th Int. he answers: I live a few hundred yards from the land. I have lived here 15 years. I have known the land ever since I have been here.

To the 5th Int. he answers: I know where George Dugan's locative interest is situated. It is in the northwest corner of the survey. Dugan has claimed the locative interest. S. W. March has claimed the balance of the survey ever since I have known it.

To the 6th Int. he answers: It has been occupied. It was first occupied in 1872. It has been ever since then up to the present time and it is now occupied.

To the 7th Int. he answers: Norton & Sons first occupied the land. They stayed on the land for five years. They occupied the land as tenants for S. W. March.

257 To 8th Int. he answers: The land was first occupied in 1872 by the Nortons. The Horton Brothers also occupied it and various other persons. Each tenant occupied under S. W. March and W. G. Salmon, the son-in-law of S. W. March. I know it has been occupied from 1872 to the present time.

To the 9th Int. he answers: The land has been occupied ever since the death of S. W. March by various tenants. Since the death of March they have claimed as tenants under W. G. Salmon, the son-in-law of Dr. March.

To the 10th Int. he answers: When I first knew the land it was unimproved. The land is now improved. The part that March claims is under a good rail and wire fence. There are 8 or 10 tenant-houses and about the same number of wells; some cow pens, horse lots, and other improvements usual about a farm. There is 800 acres or more in cultivation. The improvements were placed there at the instance of March and Salmon. The present nature of the improvements are good.

To the 11th Int. he answers: A part of said land has been cultivated—some 800 — or more. A portion of it has been in cultivation from 1872 to the present time; the balance between that time

and the present. It has been cultivated by tenants under March and Salmon. Those that leased did not pay any rent; the others did. They paid rent to S. W. March and W. G. Salmon, the son-in-law of S. W. March.

To the 12th Int. he answers: I think it would be worth three dollars per acre without the improvements. The land with the improvements on it is worth fifteen dollars per acre.

258 To the 13th Int. he answers: I have said all I know that would be of benefit to either party to this suit.

W. L. WILSON.

Answers of said Witness to Cross-Interrogatories.

Answer to 1st cross-interrogatory: I am 64 years old; I reside in Montague county, Texas. I am not a party to nor in anywise interested in this suit. I am not related to any one who is interested in said suit.

To the 2nd X Int. he answers: I never did see the Fenis Robinson land certificate and don't know what was being done with it or who had it.

To the 3rd X Int. he answers: I never saw the land certificate; therefore know nothing about its transfers nor indorsements. I never saw it and can know nothing about it nor when it was returned to the land office nor the shape it was in when it got to the land office, and know nothing about any paper being attached to the certificate.

To the 4th X Int. he answers: I never saw the certificate before nor since it was filed in the land office. I never saw the certificate in my life, and it is impossible for me to know anything about it or whether there was any transfers or endorsements on it.

To the 5th X Int. he answers: I know nothing about S. W. March acquiring the certificate or how he got possession of it or what he paid for it or anything about March's connection with it. The land claimed by March, with the improvements, is worth $15.00 per acre.

259 To the 6th X Int. he answers: I think he was an educated man. He was a doctor. I know nothing about S. W. March purchasing the land certificate or his age at the time he purchased it. I don't know whether he was a cautious trader or not. I suppose he had right smart property. I don't know anything about his business qualities. He was a man above ordinary intelligence. I don't know whether he was a man of great business capacity or not. I know nothing about S. W. March ever having said certificate or that he ever purchased the certificate or that he ever had the same in his possession, nor do I know who did have it in their possession, or when it was returned to the land office.

To the 7th X Int. he answers: I never saw the certificate in any one's possession nor did I ever examine it.

To the 8th X Int. he answers: I know nothing about the sale of said certificate or anything about the transfers of said certificate or the sale of the land or any part of the land located by it. I know

nothing about any sale or transfer, if any there was. If there ever was any sales of the certificate or of the land that was patented by it I know nothing about it. There were some leases on the land. I don't know whether the leases were in writing or not. The quality of the land leased was valley land. The leases lies about 1½ miles east from me. It is bounded on the north by Red River, on the east by the Scott survey, & bounded on the south and west by my land and a number of other surveys. Each lease was given for 5 years. It was held by leases under S. W. March. The leases were from 1872 to 1879. I know this by having lived near the land. The lessees lived on the land and not on adjoining surveys.

260 To the 9th X Int. he answers: It is not a fact that a small portion of said land has been occupied by March, but that a big portion has been occupied by him and those claiming under him. All of the land is now occupied. The G. C. Dugan land has never been occupied by any one. My means of knowing is from living near the land.

To the 10th X Int. he answers: The present market value of that part of the league as claimed by March with the improvements on it is worth fifteen dollars per acre. Dugan's part is worth $3.00 per acre.

To the 11th X Int. he answers: I don't know what the annual rental value of the land actually occupied and enclosed is.

To the 12th X Int. he answers: The entire part of the land claimed by March is under a good rail and wire fence. There are 8 or ten tenant-houses; about the same number of wells, cow pens, horse lots, & other improvements, and about 800 or 1,000 acres in a state of cultivation. All of the improvements have been put there by March & Salmon or by tenants under them. I don't know the character of each tenant's improvements. The improvements have been placed on said land from 1872 up to the present time. The present value of the improvements is about $39,000.00. I don't remember the name of each tenant.

To the 13th X Int. he answers: I never saw or heard of the Fenis Robinson certificate. I never saw it in the possession of anybody. I don't know anything about Dennis Tramel buying or selling the certificate. I don't know where Dennis Tramel lived at that time.

261 I never saw him, nor do I know anything about him or the land certificate herein spoken of, either, nor did I ever correspond with him.

To the 14th X Int. he answers: I never saw the certificate in the possession of J. P. Dumas. I never heard him say he had it. I never was informed that he had it, nor do I know of it being in his possession or under his control, nor do I know he ever had anything to do with it. He never told me anything about the certificate or about any transfers on it or about it. I know nothing of Dennis Tramble.

To the 15th X Int. he answers: I don't know anything about the certificate being returned to the land office. I know nothing about the certicate being located in Grayson county or about J. P. Dumas

having it for location in Grayson county or anything about Dumas' connection with it.

To the 16th X Int. he answers: I know he built a house. I don't know which survey it is on. The house is situated in a very convenient place. It was built on the very best place that could be found. I don't know that Dr. March was ever dissatisfied with his title. I don't know that he ever refused to build on the land in contest because his title was not good. I never heard Dr. March state that his title to the Fenis Robinson land was not good. The improvements put on the land before the death of S. W. March were not of a cheap and inferior character. I never heard Dr. March say that his reasons for not putting better improvements on the land was that his title was not good or that his title was disputed.

W. L. WILSON.

262 *Interrogatories to W. T. Wayborne, a Resident of Montague County, Texas.*

Int. 1st. State your name, age, and place of residence.

Int. 2nd. Did you ever know Squire W. March? If so, state when, where, and how long you knew him.

Int. 3rd. This suit is about one league and one labor of land in Montague county, Texas, patented the 8th day of August, 1855, to S. W. March, assignee of Finess Robinson, by virtue of certificate No. 127, issued on the first day of March, 1838, by the board of land commissioners of Houston county. Do you know where said land is situated and have you ever been on the same? If so, how long have you known said land and how often have you been on it?

Int. 4th. Did you ever examine the certificate by virtue of which said land was patented and the papers relating thereto after the same was returned to the general land office and after the same was patented to S. W. March? If so, state when and where and why you examined said certificate. If you should say that you examined it in the general land office at Austin, at the request of S. W. March, state how you came to be in Austin and what caused you to examine said certificate.

Int. 5th. At the time you examined said certificate was there any transfer on the back of the same to Warren L. Underwood or to any other person? If not, state fully how you know that fact.

Int. 6. At said time was there any brown paper pasted over the back of said certificate? If not, state your means of knowing. Describe fully the condition of said certificate. If any brown paper was attached to said certificate describe the same and state
263 how it was pasted to the certificate, if at all, and state if there was any transfer under said brown paper.

Int. 7th. State all that you know in reference to the condition of said certificate that would be of any benefit to the parties as fully as if thereto specially interrogated.

Int. 8th. Did said S. W. March ever take possession of said land and make or cause any improvements to be made thereon? If so, state when, and state how he took possession—whether in person or

by tenant. If by tenants, state who his tenants were, and state what improvements were made by such tenants or by S. W. March upon said land and when they were made and your means of knowing.

Int. 9th. Did S. W. March ever pay taxes upon said land or claim it as his own? If so, state when and how long and your means of knowing.

Int. 10th. If, in answer to the above interrogatories, you should say that S. W. March took possession of said land, state whether or not the same has been occupied ever since said March so entered upon the possession of the same. If so, state who has occupied said land and under whom they claimed. State what improvements are upon said land and when and by whom they were made, and state if any of said land has been cultivated; and, if so, how much, by whom, and for what years? Are there any houses upon said land? If so, state how many, who built them, and who has occupied them, if any one, and for what years, and under whom they claimed.

DAVIS & GARNETT AND
SAWNIE ROBINSON,
Solicitors for Def'ts.

264 To the first direct interrogatory the witness, W. T. WAYBORNE, answers as follows:

1st. My name is Waybourn; I am 77 years old, and reside in Montague county, Texas.

Ans. to second Int. he says: I have known him since 1852 and on up to the time of his death. I first knew him in Rusk county, Texas, and saw him whenever he visited this, Montague, county.

In Ans. to 3rd Int. he says: I know where the land is situated. I have been on the land frequently. I have known the land since 1862.

In Ans. to 4th Int. he says: I have examined the certificate by virtue of which the land was patented after the same had been returned to the general land office at Austin, in the year 1864. I was in Austin on business, and, desiring to see the connections between the Finess Robinson and Thomas Scott survey, I called at the land office to examine the field-notes of those surveys. My purpose was to ascertain if there was not some vacant land between the two tracts. In that examination I saw the file, certificate, and field-notes of the Finess Robinson survey.

In Ans. to 5th Int. witness says: At the time I examined the certificate there was no transfer on it to any person. I had the certificate in my hand and examined it.

In Ans. to the 6th Int. witness says: At said time there was no brown paper pasted on the back of the certificate. I had it
265 in my hand and looked at it, and it appeared to be pretty well preserved and was attached to the file paper at the top of the certificate, which was folded inside the file paper. There was at that time no other paper attached to the certificate; neither was there any transfer.

In Ans. to the 7th Int. witness says: I have stated fully all that I

know about the certificate at the time I saw it in Austin. I again saw the certificate in the hands of the clerk of the court of this, Montague, county, and it then had a piece of paper pasted on the back of it, which was not on the certificate when I saw it in Austin.

In Ans. to the 8th Int. witness says: I, as agent of S. W. March, had control of the land and paid taxes on the same from the year 1867 up to the year 1872 or 1873, at which time I, as agent of S. W. March, placed a tenant by the name of Norton upon the land. Norton moved on the land and commenced improving about Christmas, in 1872. The tenant, Norton, leased and fenced 200 acres of land and built lots, houses, and made other improvements on said land. The said lease to Norton was for five years and occupied by him or his sub-lessees for that length of time, after which it was taken possession of by other tenants of S. W. March and has continuously been occupied to the present time. Several hundred acres has been placed in a state of cultivation. There has been a number of houses, including a fine residence, and many other valuable improvements placed upon the land. S. W. March has never lived upon the land, but has had possession as above stated, as I know myself from having been his agent much of the time and having been often upon the land and all of this time a resident of Montague county, Texas.

In Ans. to the 9th Int. witness says: I know that S. W.
266 March has claimed the land ever since it has been located, and that he paid taxes from that time on the land, through me and his other agents, up to the present time. My means of knowing is from being here and being familiar with these transactions.

In answer to the 10th Int. witness says: I have already stated how S. W. March took possession and how long it has been continuously occupied in my answer to the 8th interrogatory. In addition to the first tenant, Norton, named above, I remember the Horton Brothers, who lived on the land for five years under a lease, including six hundred acres. I also remember J. W. Brown and Dr. Salmon, who is the son-in-law of S. W. March, and other tenants who have occupied the land from time to time up to the present. I cannot give the exact details of the improvements on the place further than I have in answer to the 8th interrogatory, but know that it has been very highly improved, and all the improvements on it have been placed there at the instance of S. W. March, under whom all that have heretofore lived on the land have claimed possession.

W. T. WAYBON.

Answers of said Witness to Cross-Interrogatories.

Answer to first cross-interrogatory. I am 77 years old, and reside in Montague county, Texas; have no interest in this suit. I am not related in any manner to any of the parties.

Ans. to cross-int. 2d. I first saw the certificate on file in the land office at Austin in 1864, or it might have been in 1863; it was in custody of the commissioner of the general land office. I have

already stated the circumstances which induced me to examine it.

267 Ans. to cross-int. 3rd. I am positive there was no transfer on the certificate when I first saw it, nor was there any paper on it to conceal such transfer. I know nothing of the certificate previous to that time from my own personal knowledge. I never saw the certificate at the date of its return to the land office or previous thereto.

Ans. to cross-int. 4th witness says: I have seen the certificate at two different times since it was returned to the land office—first when I examined it in the land office, as above stated, and last when it was brought to Montague county, several years ago, by order of the court. Charles Wooldrige and one of the clerks of the land office was present when I examined it in the land office at Austin. When I saw it last it had a yellowish paper pasted on the back of it, covering what was supposed to be a transfer, which was not on the certificate when I saw it at Austin. I don't know by whom nor when the paper or transfer was placed there nor for what purpose. At the time I saw it in Montague county the clerk of the district court and several others were present. I could not distinctly perceive what was under the paper pasted on the back of the certificate. I made the examination to satisfy myself whether or not this endorsement and paper had been placed there since I saw it in Austin.

Ans. to the 5th X Int. witness says: Of my own personal knowledge I do not know when S. W. March purchased the certificate or what price he paid for it or anything about his transfers. At the date of the location the land was worth not more than one dollar and fifty cents per acre. At the present, without reference to the improvements, the land, I think, would probably be worth four

268 dollars per acre. I do not know the costs of the different improvements now upon the land.

In Ans. to the 6th X Int. witness says: S. W. March was an educated man; a physician by profession. He must have been thirty years old when he purchased the certificate. He was a good trader, successful in business, and acquired a good deal of property during his life. He was a man of capacity above the average. I know nothing about how long or how often he had the certificate in his possession before it was located and returned to the land office.

Ans. to X Int. 7th witness says: When I have spoken herein of having examined the certificate I have told who was present and the result of the examination and what I ascertained.

Ans. to X Int. 8th witness says: I know nothing about the sale of the certificate or the sale of any land located under it. The leases spoken of were in writing. I have not got them in my possession, and cannot procure copies of them. The leases included the northeastern part of the Robinson tract. I have no means at present of giving (boundaries). Norton's lease was for two hundred acres and for five years, and the Horton Brothers' included six hundred acres, and was for five years. I think the date of the Norton lease was in 1872, and the Horton Brothers' about a year after.

Each of the lessees entered about the date of their lease and continued in possession until the expiration of their lease. They all lived on the land and cultivated the same. They all lived on the Fenis Robinson survey. My means of knowing was that I was the agent of S. W. March and leased out this land for him to the parties herein named.

269 In Ans. to X Int. 9th witness says: I have already answered fully the above cross-interrogatory, except as to the land claimed by Dugan. I know of no person having occupied that part of the land.

In answer to 10th cross-int. witness answers: I have already stated that the market value of the entire tract is four dollars per acre.

In answer to X Int. 11th witness says: I have no means of knowing.

In Ans. to X Int. 12th witness says: Norton put in cultivation and enclosed two hundred acres, with a good rail fence, lots, and other appendages usual about a farm. The dwelling-house is a common frame house, and the improvements placed there by him are worth at least one thousand dollars, and the improvements are worth more to-day than when first put there by reason of repairs and additions that have been put on the land. Horton Brothers put in five hundred acres, with a good rail fence around it, and erected several tenement-houses and other appendages usual on farms of such size, the valuation of which is twenty-five hundred or three thousand dollars, according to my best estimate, but are worth much more to-day by reason of repairs and subsequent additions. S. W. March himself has put a fine residence and other permanent improvements upon the land, the value and details of which I do not know. I have not noticed the particulars, nor attempted to estimate the value of the improvements for two or three years until now, and cannot answer this cross-interrogatory as to the present value better than I have above.

In answer to the 13th X Int. witness says: This certificate was in the land office when I first heard of it. I know nothing of

270 Dennis Trammel's connection with it or any correspondence or transactions between him — S. W. March with reference to the same: I never saw Dennis Trammel or had any correspondence with him. I do not know where the certificate was on the days mentioned in cross-interrogatory 13th.

In Ans. to X Int. 14th witness says: I never saw the certificate in the possession of J. P. Dumas; never knew he had any connection with it, nor had I any conversation with him about it, and don't know that he ever had the certificate; neither do I know anything about Dennis Trammel's connection with it.

Ans. to X Int. 15th witness says: I know nothing about the matters inquired of in this the 15th cross-interrogatory.

In Ans. to X Int. 16th witness says: I never heard S. W. March make any such statement. My opinion is that S. W. March's residence is on the Fines Robinson survey and not on the Scott survey. Where the house stands is a good location; I think no better could

be found on the entire tract. The improvements put there previous to March's death were very good and substantial, and the house S. W. March built previous to his death is the best in Montague county. I never heard S. W. March express any fears as to his title to the land. He always spoke in confidence of his title.

W. T. WAYBURN.

271 Interrogatories propounded to James H. Starr, who resides in Harrison Co.; James R. Arnold, who resides in Caddo parish, State of Louisiana; James Morris and James A. Dallerhide, who reside in Little River county, Ark.; George F. Moore and R. S. Walker, who reside in Travis county, Texas; Sam. Allen and W. R. Baker, who reside in Harris county, Texas; J. P. Smith, who resides in Tarrant county, Texas; Robert Elgin, who resides in Harris county, Texas, and Alfred Groom, who resides in Travis county, Texas.

Int. 1st. What is your name, age, residence, and occupation?

Int. 2nd. To Morris, Dallerhide, Starr, Arnold, Moore, Walker, Baker, & Allen: Are you acquainted with or were you ever acquainted with one Finesse Y. Roberson, *alias* Finess Y. Robertson; Oscar Engeldow, George Allen, and H. B. Dance, or either of them, and which of them? When, where, and how long are they or such of them as you knew living or dead? When and where did they or such as you knew die, if dead?

Int. 3rd. Were you in any manner and in what way acquainted with the signature or handwriting of all or any of said parties? If so, of which, and how were you acquainted, and for how long a time?

Int. 4th. Please examine a certain transfer, which will be shown to you by the officer taking your depositions, purporting to be a transfer of said Roberson's head-right certificate, and state whether or not in your opinion you know any of the signatures to such transfer, either of the grantor or maker or that of any of the witnesses thereto, and which of them you do know, and whether they are not in your opinion the genuine signatures of such of the parties as you may have known.

Int. 5th. In your opinion whose signatures do you know to said transfer?

272 Int. 6th. Please identify said transfer about which you may have testified by placing thereon some mark or in some other way referring to it that a court may know what transfer you are deposing about.

Int. 7th. What was the character of the said witnesses to the aforesaid transfer, if you know it, for honesty, intelligence, and fair dealing?

Int. 8th. When, if ever, did Finesse Y. Robertson leave or move from Texas, and where did he move to—into what State, county, or country—and how long did he live there?

Int. 2nd. To Robert Elgin and Alfred Groom: What official or other position did you hold during the year of A. D. 1855?

Int. 3rd. To Robert M. Elgin and Alfred Groom: While you may have been connected with the general land office of Texas during A. D. 1855, and especially during June, July, and August of said year, did you see or in any manner handle—and, if so, in what way—Finesse Roberson's league and labor land certificate No. 127, issued in Houston county, Texas, in 1838?

Int. 4th. State whether or not you saw then, during the year A. D. 1855, any transfer indorsed on the back of said certificate. If not, was there anything to prevent or make difficult your seeing such transfer? If so, describe particularly what it was prevented you from seeing such transfer, if anything did prevent your seeing same.

Int. 5th. Was there any fastened on or to said certificate when it came into the general land office in A. D. 1855? If yea, what was it and how do you know? State fully all matters connected with any paper hid or covered, if anything, and how and why you know.

273 Int. 6th. Was the said certificate marked "filed"? If so, when and by whom; where was the file-mark placed? If not on the certificate itself, why was it placed on something else?

Int. 7th. If in your answer either of you have stated in substance that when the said certificate came into the general land office in A. D. 1855 the same was covered on the back thereof by and with a piece of brown or other paper, then state whether or not the said brown paper was not removed or taken from the back or off of said certificate. If yea, when, where, how, and by whom? State then, after this was done, what was discovered under said brown or other paper; and, if a transfer, from whom and to whom. What was the appearance of said certificate when you first saw same—worn or mutilated; if yea, much or little, and such as to show or not any cause for covering the same with any paper to preserve the pieces, and state whether the transfer inquired about could or not be seen before taking said brown or other paper off of said certificate, and when the same was first discovered and how it was it was discovered.

Int. 8th. Did you know or does the records of general land office show that one W. C. Caruthers acted in 1842 as deputy surveyor? If yea, of what county or district was he a deputy surveyor of?

Int. 2nd. To J. P. Smith: Do you know anything about the Finesse Roberson league and labor of land in Montague county, Texas? If yea, state its value and all you may know about the location thereof.

Int. 3rd. Have you any interest in this suit or are you in any way related to any of the parties to this action? If so, in what way and to whom?

274 Int. 4th. State whether or not any one—and, if so, who and when—told you about the placing or pasting of a certain paper on the back of the Finesse Roberson league and labor land certificate, and state fully all that was said to you on the subject.

Int. 5th. State whether or not you know one James P. Dumas. If yea, when did you first get acquainted with him? What office,

if any, did he hold in 1854 or 1855 and prior thereto and how long did he hold said office and in what county or district?

Int. 6th. Did you ever know one W. C. Caruthers, a deputy surveyor? If so, when and where did he live and hold office as such deputy surveyor?

A. M. CARTER AND
WELBORN, LEAKE & HENRY,
Solicitors for Plaintiffs.

275 *Cross-Interrogatories to Morris, Dallerhide, Starr, Arnold, Moore, Walker, Baker, and Allen, Witnesses for Plaintiff.*

Cross-int. 1st. If you have stated that you are acquainted with the handwriting or the signature of Finess T. Roberson or Robertson, Oscar Engeldow, George Allen, and H. B. Dance or either of them please state the last time you saw either of them write anything or saw anything that you knew was written by either of them. Where are each of said parties now?

SAWNIE ROBERTSON,
Defendant's Solicitor.

Cross-Interrogatories to Robert Elgin and Alfred Groom.

Cross-int. 1st. How do you know that there was any thing or paper attached or fastened to the Finesse Roberson certificate when it came into the land office in 1855 or about that time? How do you know but that the paper referred to has not been attached to said certificate since that time? When was your attention first called to the paper on said certificate, and who by? When were you last employed in the land office?

Cross-int. 2nd. What was the custom in the land office of Texas in 1855 and for a few years previous to and after said year as to where file-marks on certificates were placed? Were the file-marks ever placed on the envelope containing the certificate or on a piece of paper filed with, attached to or inclosing it? If yea, please state about the proportion of times the file-mark was placed on the certificate itself and on the envelope or piece of paper attached to or accompanying it.

Cross-int. 3rd. When was the pretended transfer on the back of the Finess Roberson certificate first discovered, and who by? Who was said transfer to, and why was it not sooner discovered by such person?

SAWNIE ROBERTSON,
Solicitor for Defendant.

276 *Cross-Interrogatories to J. P. Smith.*

Cross-int. 1st. Where do you live now, and how long have you lived at such place? What is your occupation? Did you ever engage in any way in the land business; if yea, where at and who with? Were you ever engaged or interested in any land transaction

with any person by the name of Cundiff; if yea, which one of the Cundiffs, and what was the nature of the transaction?

Cross-int. 2nd. Where is the person who you said told you about the pasting or placing of a piece of paper on the Finesse Roberson certificate now? Who was present when he told you what you have testified about in answer to Int. 4th? Where did he tell you this, and when? How long had you known him at that time? Where did he live at that time, and where did you live? How did plaintiffs find out that he told you this, and when did they find it out? Did said person tell you this as a secret or publicly? If as a secret how did you come to tell it? If publicly, give the name and residence of some one besides yourself who heard it.

Cross-int. 3rd. How long have you known the Cundiffs, and what interest has each of them in this suit? Do you not know that the deed to James J. R Cundiff was only made to give the Federal court jurisdiction of this case, and thereby avoid a trial where they are known?

SAWNIE ROBERTSON,
Solicitor for Defendant.

277 *Answers and Deposition of W. R. Baker, of Harris County, Texas, to the Accompanying Interrogatories and Cross-Interrogatories.*

Ans. to Int. 1st. My name is William R. Baker; age, 62; residence, city of Houston, Harris county, Texas, and am mayor of the city of Houston, my present occupation.

Ans. to Int. 2nd. I am acquainted or have been acquainted with only one of the persons inquired about in this interrogatory, and that is George Allen. I knew him in Texas from 1838 until his death, which occurred in the year A. D. 1854. He was a resident of Harris and Brazonia counties during the time, and died in the city of Houston.

Ans. to Int. 3rd. I was well acquainted with the signature of George Allen from having seen it often and having seen him write almost daily for several years. We were partners in a mercantile business.

Ans. to Int. 4th. I have examined the transfer on the back of a certificate of head-right to which the signature of George Allen appears signed as a witness, and said signature, in my judgment, is the genuine signature of George Allen.

Ans. to Int. 5th. I know the signature of George Allen and am of the opinion that it is genuine.

Ans. to Int. 6th. The transfer is marked "A," and my initials are put just under that letter.

Ans. to Int. 7th. The character of George Allen, whose signature as a witness I believe to be genuine, was without blemish for honesty, integrity, and fair dealing.

278 Ans. to Int. 8th. I do not know.

Ans. to Int. 1st, cross. The last time that I saw George Allen write was about the year 1854. I have frequently seen the writing of George Allen since his death on old books and mercan-

tile paper, pertaining to the mercantile business that we were formerly engaged in. He is dead.

W. R. BAKER.

THE STATE OF TEXAS, }
County of Harris. }

I, J. M. Poland, a notary public in and for Harris county, do hereby certify that the foregoing answers of W. R. Baker were taken before me, subscribed and sworn to before me by said witness. To certify which I hereto set my hand and official seal May 19th, 1882.

J. M. POLAND,

[SEAL.] *Notary Public, Harris County, Texas.*

279 Interrogatories propounded to James H. Starr, who resides in Harrison county, Texas; James R. Arnold, who resides in Caddo parish, State of Louisiana; James A. Dallerhide, who resides in Little River county, Ark.; George F. Moore and R. S. Walker, who reside in Travis county, Texas; Sam. Allen and W. R. Baker, who reside in Harris county, Texas; J. P. Smith, who resides in Tarrant county, Texas; Robert Elgin, who resides in Harris county, Texas, and Alfred Grooms, who resides in Travis county, Texas.

Int. 1st. What is your name, age, residence, and occupation?

Int. 2nd. To Morris, Dallerhide, Starr, Arnold, Walker, Baker, and Allen: Are you acquainted with or were you ever acquainted with one Finess Y. Roberson, *alias* Finess Y. Robertson; Oscar Engeldow, George Allen, and H. B. Dance or either of them, and which of them? When, where, and how long are they or such of them as you knew living or dead? When and where did they or such as you knew die, if dead?

Int. 3rd. Were you in any manner and in what way acquainted with the signatures or handwriting of all or any of said parties; if so, of which and how were you so acquainted and for how long a time?

Int. 4th. Please examine a certain transfer which will be shown to you by the officer taking your deposition, purporting to be a transfer of said Roberson's head-right certificate, and state whether or not, in your opinion, you know any of the signatures to such transfer, either of the grantor or maker or that of any of the witnesses thereto, and which of them you do know, and whether they are not, in your opinion, the genuine signatures of such of the parties as you may have known.

Int. 5th. In your opinion whose signatures do you know to said transfer?

280 Int. 6th. Please identify said transfer about which you may have testified by placing thereon some mark or in some other way referring to it that a court may know what transfer you are deposing about.

Int. 7th. What was the character of the said witnesses to the said transfer, if you know it, for honesty, intelligence, and fair dealing?

Int. 8th. When, if ever, did Finess Y. Roberson leave or move from Texas and where did he move to—into what State, county, or country—and how long did he live there?

Int. 2nd. To Robert Elgin and Alfred Groom: What official or other position did you hold during the year of A. D. 1855, and especially during June, July, and August, A. D. 1855?

Int. 3rd. To Robert M. Elgin and Alfred Groom: While you may have been connected with the general land office of Texas during A. D. 1855, and especially during June, July, and August of said year, did you see or in any manner handle, and, if so, in what way, the Finesse Robertson league and labor land certificate No. 127, issued in Houston county, Texas, in 1838?

Int. 4th. State whether or not you saw then, during the year A. D. 1855, any transfer indorsed on the back of said certificate; if not, was there anything to prevent or make difficult your seeing such transfer? If so, describe particularly what it was prevented you from seeing such transfer, if anything did prevent you from seeing same.

Int. 5th. Was there any- fastened on or to said certificate when it came into the general land office, in A. D. 1855; if yea, what was it and how do you know? State fully all matters connected
281 with any paper which may have been on said certificate, and what it, the paper, hid or covered, if anything, and how and why you know.

Int. 6th. Was the said certificate marked "file;" if so, when and by whom? Where was the file-mark placed? If not on the certificate itself why was it placed on something else?

Int. 7th. If in your answer either of you have stated in substance that when the said certificate came into the general land office, in A. D. 1855, the same was covered on the back thereof by and with a piece of brown or other paper, then state whether or not the said brown paper was ever removed or taken from the back or off of said certificate. If yea, when, where, how, and by whom? State, then, after this was done what was discovered under said brown or other paper, and, if a transfer, from whom and to whom. What was the appearance of said certificate when you first saw same—worn or mutilated? If yea, much or little, and such as to show or not any cause for covering the same with any paper to preserve the pieces, and state whether the transfer inquired about could or not be seen before taking said brown or other paper off of said certificate and when the same was first discovered and how it was discovered.

Int. 8th. Did you know or does the records of the general land office show that one W. C. Caruthers acted in 1842 as deputy surveyor? If yea, of what county or district was he a deputy surveyor of?

Int. 2nd. To J. P. Smith: Do you know anything about the Finesse Robertson league and labor of land in Montague county, Texas? If yea, state its value and all you may know about the location thereof.

Int. 3rd. Have you any interest in this suit or are you in
282 any way related to any of the parties to this action; if so, in what way and to whom?

Int. 4th. State whether or not any one, and, if so, who and when, told you about the placing or pasting of a certain paper on the back of the Finesse Roberson league and labor land certificate, and state fully all that was said to you on the subject.

Int. 5th. State whether or not you know one James P. Dumas; if yea, when did you first get acquainted with him? What office, if any, did — hold in 1854 or 1855 and prior thereto, and how long did he hold such office, and in what county or district?

Int. 6th. Did you ever know one W. C. Caruthers, a deputy surveyor; if so, when and where did he live and hold office as such deputy surveyor?

A. M. CARTER AND
WELBORN, LEAKE & HENRY,
Solicitors for Plaintiffs.

Service of within accepted, and we consent that the depositions of any of the witnesses named in the notice may be taken in Travis county, Texas, by any officer of said county authorized by the laws of the State of Texas to take and return depositions. Time waived.

SAWNIE ROBERTSON,
Solicitor for Defendants.

283 JAMES R. ARNOLD, being produced and sworn, answers as follows to the—

Int. 1st. My name is James Richardson Arnold; I was 58 years old Oct. 3rd, 1881; my residence is Shreveport, Louisiana; my occupation for many years, that of a merchant.

Ans. to Int. 2nd. I did not know Finess Y. Roberson *alias* Finess Y. Robertson. I knew Oscar Engeldow, George Allen, and H. B. Dance. I knew Oscar Engeldow and H. B. Dance in Nacogdoches, Texas, my acquaintance commencing in the spring of 1838 and continuing until the time of their death; they, Oscar Engeldow and H. B. Dance, are both dead. The former died about the year 1868 in Nacogdoches county, State of Texas; the latte (H. B. Dance) died about the year 1854 in Rusk county, Texas.

Ans. to Int. 3rd. I was well acquainted with the signatures of Oscar Engeldow and H. B. Dance, having seen them frequently write their names and being familiar with their handwriting from the time of early acquaintance until their death.

Ans. to Int. 4th. I have examined the transfer of Roberson's head-right referred to. I am acquainted with the signatures of two of the witnesses to said transfer, to wit, that of Oscar Engeldow and H. B. Dance, and believe their signatures to be genuine.

Ans. to Int. 5th. I know the signatures of Oscar Engeldow and H. B. Dance.

284 Ans. to Int. 6th. I identify said transfer by placing thereon the initials of my name, J. R. A.

Ans. to Int. 7th. The witnesses, Oscar Engeldow and H. P. Dance, bore the character of honest, intelligent, and upright men; none more so as to integrity.

Ans. to cross-int. I cannot from recollection say at what time I saw either Oscar Engeldow or H. B. Dance last write their names or any other writing, but will say that the last time I have seen anything written by them is now when I look upon their signatures to the transfer identified by my answer to direct interrogatory 6th, which I believe to be their genuine signatures.

JAMES R. ARNOLD.

Sworn to and subscribed before me this 22nd day of May, 1882.

LEWIS E. CARTER,

[SEAL.] *Notary Public in and for Caddo Parish, State of Louisiana.*

I, Lewis E. Carter, notary public, duly commissioned and qualified in and for the parish of Caddo, State of Louisiana, do certify that I caused James R. Arnold, witness hereinbefore named and examined, to appear before me at the time and place above named, and after publicly and solemnly swearing him to tell the truth, the whole truth, and nothing but the truth in answer to the annexed direct and cross-interrogatories, I then and there propounded to said witness the said direct and cross-interrogatories and reduced the same to writing with my own hand in the presence of said witness, and caused said witness to sign the same in my presence, as already stated.

285 In witness whereof I hereto sign my name and affix my official seal this 22nd day of May, 1882.

LEWIS E. CARTER,

[SEAL.] *Notary Public in and for Caddo Parish, State of Louisiana.*

* * * * * * *

The plaintiffs read in evidence the eighteen exhibits attached to original bill and all the written agreements copied into the transcript.

The defendants introduced in evidence all exhibits attached to their pleadings.

286 Direct interrogatories propounded by complainants to Robert Rodes, H. T. Clark, John Burnam, J. H. Rose, A. G. Hobson, C. A. Everhart, L. C. Porter, all residents of Bowling Green, State of Kentucky.

Int. 1st. State your age and place of residence.

Int. 2nd. Did you ever know, and, if yea, when and where, Warner L. Underwood? Is he living or dead? If dead, when did he die? Did he ever live in Texas. And, if he did, state for how long and in what year or years. Did he leave Texas; and, if so, when? Did he leave it with the intention of remaining away or returning? If he intended to return, state, if you know, why he did not do so.

Int. 3rd. Were you acquainted with the handwriting of said Warner L. Underwood. And, if so, state how you obtained your knowledge.

Int. 4th. You will please examine the paper now exhibited to you, purporting to be a certificate for land to one Fines Robertson, and particularly to the transfer or transfers on the back of the same, and state if you know in whose handwriting they are; and if you do know, then state in whose, and the grounds of your opinion.

Int. 5th. If said Warner L. Underwood is dead, state who survived him of his children, if he had any; state if his widow survived him, and her name; state if any of his grandchildren by parent, who died before he did, survived him.

Int. 6th. Do you know or can you set forth any other mat-
287 ter or thing which may be of benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

(Signed) A. M. CARTER,
WELLBORNE, LEAKE & HENRY,
Solicitors for Plaintiff.

288 Cross-interrogatories propounded to Robert Rodes, H. T. Clark, John Burnam, J. H. Rose, A. G. Hobson, C. A. Everhart, and L. C. Porter, residents of Bowling Green, Kentucky.

X Int. 1. Was not Warner L. Underwood a lawyer by profession; and, if so, was he not an able lawyer?

X Int. 2. Give the exact date of the death of Warner L. Underwood as near as you can, and your means of knowing.

X Int. 3. In what portion of Kentucky did Warner L. Underwood reside?

X Int. 4. Was said Underwood a married man or a widower at the time of his death? If a married man, give the name of his wife, and whether living or dead; and, if dead, when she died.

X Int. 5. Was said Underwood married or single when he lived in Texas? If married, state whether or not his wife came to Texas with him.

X Int. 6. How long have you been acquainted with Warner L. Underwood's handwriting, when is the first time you ever saw him write, and when did you first see any of his writing?

X Int. 7. What was Warner L. Underwood's age at the time of his death, of what disease did he die, and how long had he been so afflicted? Was he paralyzed; and, if so, to what extent and how long had he been in this condition?

289 X Int. 8. Give the date of Warner L. Underwood's death, as shown upon his tombstone.

(Signed) SAWNIE ROBERTSON,
Solicitor for Defendants.

290 *The Depositions of L. C. Porter, Taken upon Interrogatories, at the Office of G. P. Payne, in Bowling Green, Ken.*

Ans. to Int. 1st. I am 71 years old. I reside in Bowling Green, Ky. 2nd. I did know W. L. Underwood, and have known him all my

life. I was his family physician for 35 or 40 years. He is dead. He died about 1872. He went to Texas about 1835 and remained there about two or three years. He was here again in 1838 or '39. I attended him then. I cannot state whether he left with intention of remaining here or returning. I always thought he went there for the purpose of speculating in land. I can't say why he did not return.

3rd. I was acquainted with the handwriting of Warner L. Underwood. I have received many letters from him and have his receipts in my possession.

4th. I have examined the certificate referred to and the transfer on back of it, and I am satisfied it is the handwriting of Warner L. Underwood. It has all the peculiarities of his hand and I would say it is his handwriting.

5th. All of his children survived him, to wit, Lucy U. McCann, Fannie U. Grider, Juliet U. Grestern, Josephine U. Nazro, Mary U. Payntz, and Warner Underwood, Henry L. Underwood, and John Underwood. His widow did survive him and is still living. Her name is Lucy C. Underwood. His grandchildren all survived him.

291 6th. I know of nothing more than what he has stated to me of his owning lands in Texas. I have heard him say he had the basis of a fortune there. I indorsed my initials on back of the certificate referred to for identification.

Answers to Cross-Interrogatories.

Ans. to 1st cross-int. Warner L. Underwood was a lawyer by profession, and was an eminent lawyer.

2d. He died in March, 1872, as shown by the books of the undertaker who buried him.

3d. In Warren county, Kentucky.

4th. A married man. Lucy C. Underwood is the name of his wife and she is still living.

5th. He was married. His wife did not go to Texas with him.

6th. I have known his handwriting 45 years. I have seen his handwriting since we were boys, until his last illness.

7th. He was about 65 years old at his death. He died of paralysis, and was afflicted four or five years. He was paralyzed on one side—one-half his body.

8th. His tombstone shows he died.

(Signed) L. C. PORTER.

292 Witness claims $1.00 attendance.

Subscribed and sworn to before me by L. C. Porter this May 21st, '83.

G. B. PAYNE,
Notary Public.

Also the depositions of J. H. Rose, taken at the same time and place and for the purpose mentioned in the caption.

Witness, first sworn, says in answer to the 1st Int: I am 65 years old. I reside in Bowling Green, Kentucky.

2. I have known Warner L. Underwood since 1840, and intimately since 1855, up to the time of his death. He is dead, and according to my recollection he died in 1872. I don't know whether he lived in Texas or not. I was and am acquainted with the handwriting of Warner L. Underwood. I became acquainted with it by seeing him write and by corresponding with him about his own business and that of others left with me by him to attend to for him at the time he was appointed minister or consul to Glasgow, Scotland.

4th. I have examined the land certificate and the transfer on back of it, dated 5th March, 1838, and I know the transfer dated 5th March, 1838, is in the handwriting of Warner L. Underwood, and I indorse my initials under L. C. P. on said certificate and over the transfer, for identification. The other writing on the paper I know nothing of.

5th. All of his children survived him; his wife also, and she is still living; her name is Lucy C. Underwood; all of his grandchildren survived him.

293 6th. I know nothing of interest or material to the issue more than I have already stated.

Answers to the cross-int. 1st. He was a lawyer by profession and was a lawyer above mediocrity, and was a successful practitioner.

2. He died in March, 1872, as shown from the books of J. C. Gerand, the undertaker who buried him.

3. Near Bowling Green, Warren county, Kentucky.

4th. A married man; his wife's name is Lucy C. Underwood, and she is still living.

5th. In answer to this I cannot say.

6th. I have been acquainted with his handwriting since 1855. I can't state when I first saw his writing or when I saw him write.

7th. I do not know his age at the — of his death; he was paralyzed for four years before his death.

8th. His tombstone shows that he died on 12th March, 1872.

JAMES H. ROSE.

294 Subscribed and sworn to before me by J. H. Rose May 21st, '83.

—— ——.

Also the depositions of ROBERT RODES, taken at the same time and place and for the purpose mentioned in the caption:

1st. Answer to 1st direct interrogatory. My age is 58 years on 28th September, 1882. My residence is Bowling Green, Kentucky.

2. Answer to 2nd interrogatory. I did know Warner L. Underwood. I was first introduced to him in 1849, the year I moved my residence to Bowling Green. I knew him from that time till the year he died. He died, from best recollection, in 1872 or 1873. I have no personal knowledge that he ever lived in Texas, but have heard him speak of the fact. I do not know how long nor in what

year or years, nor do I know when he left Texas. I have heard him say that he owned land there. I do not — with what intent he left Texas, whether to stay away or return, nor why he did not return.

3rd. Answer to 3rd interrogatory. I was and am well acquainted with the handwriting of Warner L. Underwood. I have seen him write a great many times. I have read many pages of his writing, and my acquaintance with it arose from the fact that we both practiced law in this county and certain adjoining counties for several years, in the course of which I had the best of opportunities to see and to know his handwriting.

4th. Answer to 4th interrogatory. I have examined the paper now exhibited to me, purporting to be a certificate for land to one Fineass Robinson, bearing date 1st March, 1838, and also a transfer indorsed on same, bearing date 5th March, 1838, purporting to be
295 signed by Phinieas Y. Robinson (as I spell it). This transfer so signed or purporting to be signed by said Robinson is in the handwriting, in my judgment, of Warner L. Underwood. The said transfer begins with the words "For value received" and ends with the words "March 5th, 1838." This transfer embraced by and within the words thus quoted by me is written by and in the handwriting of Warner L. Underwood. I know none of the handwriting on this paper or appertaining to it, as I find, except the words "Constituting the transfer and purporting to be signed by Phineas Y. Robinson." I have endorsed the letters R R on said paper to identify the same, and those letters R R are immediately under the letters J. H. R. The grounds of my opinion that the words I have alluded to are the handwriting of Warner L. Underwood are that I have seen said Underwood often write; that I have often read his writing; that I knew it well and know it now, in my judgment.

5th. Ans. to 5th interrogatory. All of Warner L. Underwood's children survived him; that I know. If he ever had any to die they must have died before I first knew him, in 1849. His widow did survive him. Her maiden name was Lucy Henry, a daughter of Mathew Henry, from reputation. She was married when I first knew her, in 1849, and I never knew her father. All of his children (*i. e.*, W. L. Underwood) are alive, so far as I know, except Warner Underwood, his son, who died several years ago, leaving a widow and several children; but he died since his father, W. L. Underwood.

6th. Answer to 6th interrogatory. I know of nothing else which may be of use or advantage to the parties in this cause or to either of them or that may be material to the subject, so far as I now see or remember.

296 *Answers to Cross-Interrogatories.*

1st. To first cross-interrogatory I answer: That Warner L. Underwood was a lawyer by profession and was a good lawyer—I might say, an able lawyer.

To the 2nd interrogatory I answer: That Warner L. Underwood died in the year 1872 or 1873, from best recollection. His son-in-

law, B. C. Grider, died in February, 1872, and W. L. Underwood died subsequent thereto, and I think, according to best recollection, within twelve months. I did not see him die nor was I present at the funeral, but it was a well-recognized fact, and I know I have not seen him since he was so reported to be dead.

To 3rd interrogatory I answer: That Warner L. Underwood resided in Warren county, Kentucky, in the southern portion of the State, and about 65 or 70 miles from Nashville, Tennessee.

To 4th cross-interrogatory I answer: That Warren L. Underwood was a married man when he died, and his wife still lives or was a few months ago, when I last saw her. She is said to be alive, but in very bad health. I refer to my answer to direct interrogatory as to her name. She was usually called Lucy by her particular friends and I have seen it so written.

To 5th interrogatory I answer: I do not know nor do I know whether his wife ever came (or went) to Texas at any time. My best recollection is that I have heard the facts mentioned that Mrs. Underwood was in Texas with him, but will not be certain.

297 6th. To 6th interrogatory I answer: That I have known Warner L. Underwood's handwriting since I became well acquainted with him. I first saw him write in 1849, when I first saw his writing, according to my recollection; at least I have no recollection of seeing any prior to that year. Since that year, 1849, I have always known it. The exact day or month when I could say I knew it well I could not now name, but I have had continued knowledge of it ever since that year.

7th. To the 7th interrogatory I answer: I only know Warner L. Underwood's age from my recollection of what he said about it, and, if my recollection is not in error, which I think is not likely, he said to me that he was born in the year 1808. I do not know from what disease he died. He had been partially paralyzed for some 4 years, or about that time, before his death. I think he was paralyzed on his right side and arm. To what extent his brain was involved I do not know, but evidently to some degree.

8th. To 8th interrogatory I answer and say: I have not seen his grave-stone and do not know what it says, nor any memorial on his tombstone.

And further this deponent saith not.

ROBERT RODES.

Subscribed and sworn to before me by Robert Rodes July 21st, '83.

G. B. PAYNE,
Notary Public.

298 Also the deposition of A. G. HOBSON, taken at same time and place and for the purpose stated in the caption.

Witness, first sworn, says in answer to Int. 1st:

Ans. to Int. 1st. My age is 67; residence, Bowling Green, Ky.

2. Yes; first became acquainted with him in November, 1830, at the Warren circuit and county court clerk's office in Bowling Green,

and I knew him until the day of his death. He is dead; he died in 1872; he went to Texas, and was there for two or three years—say, 36, '7, and '38. He came back in the early part of 1839. I cannot say what his intentions were.

3. I was acquainted with the handwriting of said Underwood. I obtained my knowledge of his handwriting thus: I was deputy clerk in the Warren circuit court and county courts from 1831 and principal clerk in said courts for eleven years, making a continuance of service in the said offices 21 years. During that time W. L. Underwood was a practicing lawyer in said courts, and saw him write, and copied his bills in chancery, answers, and deeds filed in said court.

4. I have examined the paper referred to and state that the transfer commencing "For value received" and ending with "March 5th, 1838" is all in the handwrite of Warner L. Underwood; the balance of said paper I know nothing of. I marked said writing with the initials of my name, A. G. H., for identification. The writing referred to is familiar to me as similar to his writing, often seen, read, and copied as above stated, and its similarity is so correct as not to be doubted by me, and, from the appearance
299 of the paper and Mr. Underwood's business qualities, was written at the time it purports to be, and written by him.

5. He is dead, and all of his children and grandchildren survived him.

6. I cannot state as to the particular interest of the parties in the suit. He informed me his object was to enter and purchase lands in Texas, and upon his return he informed me he had obtained a large number of acres.

Answers to Cross-Interrogatories.

1. Yes.

2. He died in 1872, and I am informed March, 1872.

3. In Warren county, in the town of Bowling Green, and at his death in the county near the town.

4. A married man; his wife's name is Lucy C. Underwood, and is living.

5. Married; my best recollection is that she went with him.

6. Since 1830 until his death. I first saw him write in 1830.

7. He was about 64 or 65 at the time of his death. He was paralyzed a year or so before his death, and died from the effects of it. I cannot answer, never having seen his tomb.

A. G. HOBSON.

300 Subscribed and sworn to before me by A. G. Hobson this May 21st, '83.

G. B. PAYNE,
Notary Public.

Also the depositions of H. T. CLARKE, taken at same time and place and for the purpose mentioned in the caption.

In answer to 4th Int. witness says:

I. I am 51 years old. I reside in Warren county, near Bowling Green, Ky.

2. I have known Warner L. Underwood since 1854. I first became acquainted with him in Butler county, Ky. He is dead. He died in 1872. I only know that he was there in Texas from what he told me. He told me about his travelling in Texas and of his land speculations there. I do not know when he left Texas or what his intentions were.

3. I was acquainted with his handwriting. In 1854 I was deputy clerk in the Butler county circuit court. He was then doing a circuit practice embracing that county, and continued it until 1855. He was then elected member of Congress from district in which he lived in 1856. I obtained license to practice law and he then placed in my hands accounts he had for fees in Butler county for collection. After that I had frequent correspondence with him about said claims and other matters up to December, 1866. At that time I moved to Bowling Green, the place of his residence, and was intimate with him and his handwriting until his death.

4. I have examined the following assignments on back of land certificate No. 127: "For value rec'd I assign and convey
301 unto Warner L. Underwood the within certificate, as per deed also of this date, March 5th, 1838.—Phineas Y. Robinson." All of this assignment is in his handwriting except the signature and the witnesses' signatures. I mark said papers with my initials for identification H. T. C.

5. All of his children and grandchildren and his wife survived him. His wife's name is Lucy C. Underwood, and she is still living here.

6. I cannot make any further statement material to either party.

Answers to X Interrogatories.

1st. He was a lawyer and a good one.

2. I can't give the exact date, but I am informed he died in March, 1872, and this is my recollection.

3. In Bowling Green and in Warren Co., Ky.

4. Married, and his widow, Mrs. Lucy C. Underwood, is still living.

5. I would say he was married, but do not know whether his wife went with him or not.

6. In 1854 was the first time I saw his writing.

7. He was over 60 years old when he died. He was paralyzed some time before he died, about one year, and never got over it.

8. It is.

H. T. CLARKE.

302 Subscribed and sworn to before me by H. T. Clarke May 21st, 1883.

G. B. PAYNE,
Notary Public.

Also the depositions of C. A. EVERHART, taken at same time and place and for the purposes mentioned in the caption.

In answer to interrogatories says:

1st. I am over 60 years old; I live in Bowling Green, Ky.

2. I did know him from 1841 until his death. He is dead; he died in March, 1872. He told me that he lived in Texas for 4 or 5 years; I do not remember the years, but it was before 1840. I do not remember when he left Texas and what his intentions were.

3. I was at one time, but am not now.

4th. I have examined the paper referred to and the transfer on back of it and my opinion is it is his handwriting. That is the transfer, dated March 5th, 1838. The writing appears familiar to me.

5. He is dead, but his wife, Lucy C. Underwood, and all his children and grandchildren survived him; his widow is still living.

6th. I cannot state anything else material to the issue.

Ans. to X Interrogatories.

1st. He was.

2. I am informed he died in March, 1872.

303 3. He lived in Bowling Green and in Warren county, Ky.

4. A married man. His wife's name is Lucy C. Underwood, and she is still living.

5. I don't remember.

6. In 1842.

7. He was about 60 or 65 years old when he died. My recollection is he was paralyzed, but don't know how long.

8. I cannot give the date, but I am informed that the date on the tombstone is "died."

C. A. EVERHART.

Subscribed and sworn to before me this 21st May, 1883.

G. B. PAYNE,
Notary Public.

STATE OF KENTUCKY, } ss:
Warren County. }

I, Geo. B. Payne, notary public for the county and State aforesaid, certify that the foregoing depositions of L. C. Porter, J. H. Rose, Rob't Rodes, A. G. Hobson, H. T. Clarke, and C. A. Everhart were taken before me at the time and place stated in the caption; that said witnesses were sworn before *give* them by me, and the statements of L. C. Porter, J. H. Rose, H. T. Clarke, & C. A. Everhart were reduced to writing by me in their presence and subscribed by them in my presence, & the statement of Rob't Rodes & A. G. Hobson was reduced to writing by themselves and subscribed by them in my presence.

Given under my hand and notarial seal this 21st May, 1883.

[SEAL.]

G. B. PAYNE,
Notary Public.

304 Interrogatories propounded to James Morris, James S. Dollarhide, and nine others—Jas. H. Starr, Jas. R. Arnold, Geo. F. Moore, R. S. Walker, Sam. Allen, W. R. Baker, J. P. Smith, Rob't Elgin, and Alfred Grooms.

Int. 1st. What is your name, age, residence, and occupation?

Int. 2nd. To Morris, Dallerhide, Starr, Arnold, Moore, Walker, Baker, & Allen: Are you acquainted with or were you ever acquainted with one Finesse Y. Roberson, *alias* Finess Y. Robertson; Oscar Engledow, George Allen, and H. B. Dance, or either of them, and which of them? When, where, and how long are they or such of them living or dead? When and where did they or such as you knew die, if dead?

Int. 3rd. Were you in any manner, and in what way, acquainted with the signature or handwriting of all or any of said parties; if so, of which, and how were you so acquainted, and for how long a time?

Int. 4th. Please examine a certain transfer, which will be shown to you by the officer taking your deposition, purporting to be a transfer of said Roberson's head-right certificate, and state whether or not, in your opinion, you know any of the signatures to such transfer, either of the grantor or maker, or that of any of the witnesses thereto, and which of them you do know, and whether they are or not, in your opinion, the genuine signatures of such of the parties as you may have known.

Int. 5th. In your opinion whose signatures do you know to said transfer?

Int. 6th. Please identify said transfer, about which you may have testified, by placing thereon some mark or in some other way referring to it that a court may know what transfer you are deposing about.

305 Int. 7th. What was the character of the said witnesses to the aforesaid transfer, if you know it, for honesty, intelligence, and fair dealing?

Int. 8th. When, if ever, did Finess Y. Roberson leave or move from Texas, and where did he move to—into what State, county, or country—and how long did he leave there?

Int. 2nd. To Robert Elgin and Alfred Groom: What official or other position did you hold during the year of A. D. 1855, and especially during June, July, and August, A. D. 1855?

Int. 3rd. To Robert M. Elgin and Alfred Groom: While you may have been connected with the general land office of Texas during A. D. 1855, and especially during June, July, and August of said year, did you see or in any manner handle—and, if so, in what way—the Finesse Robertson league and labor land certificate No. 127 issued in Houston county, Texas, in 1838?

Int. 4th. State whether or not you saw then, during the year A. D. 1855, any transfer indorsed on the back of said certificate. If not, was there anything to prevent you or make difficult your seeing such transfer? If so, describe particularly what it was prevented you from seeing such transfer, if anything did prevent you seeing same.

Int. 5th. Was there any fastened on or to said certificate when it came into the general land office in A. D. 1855; if yea, what was it and how do you know? State fully all matters connected with any paper which may have been on said certificate, and what it,
306 the paper, hid or covered, if anything, and how and why you know.

Int. 6th. Was the said certificate marked "filed?" If so, when and by whom? Where was the file-mark placed? If not on the certificate itself, why was it placed on something else?

Int. 7th. If in your answer either of you have stated in substance that when the said certificate came into the general land office, in A. D. 1855, the same was covered on the back thereof by and with a piece of brown or other paper, then state whether or not the said brown paper was ever removed or taken from the back or off of said certificate. If yea, when, where, how, and by whom? State then after this was done what was discovered under said brown or other paper, and, if a transfer, from whom and to whom. What was the appearance of said certificate when you first saw same—worn or mutilated? If yea, much or little and such as to show or not any cause for covering the same with any paper to preserve the pieces? And state whether the transfer enquired about could or not be seen before taking said brown or other paper off of said certificate and when the same was first discovered and how it was it was discovered.

Int. 8th. Did you know or does the records of general land office show that one W. C. Caruthers acted in 1842 as deputy surveyor? If yea, of what county or district was he a deputy surveyor of?

Int. 2nd. To J. P. Smith: Do you know anything about the Finesse Robertson league and labor of land in Montague county, Texas? If yea, state its value and all your may know about the location thereof.

307 Int. 3rd. Have you any interest in this suit or are you in any way related to any of the parties to this action? If so, in what way and to whom?

Int. 4th. State whether or not any one—and, if so, who and when—told you about the placing or pasting of a certain paper on the back of the Finesse Robertson league and labor land certificate, and state fully all that was said to you on the subject.

Int. 5th. State whether or not you knew one James P. Dumas. If yea, when did you first get acquainted with him? What office, if any, did he hold in 1854 or 1855 and prior thereto, and how long did he hold such office and in what county or district?

Int. 6th. Did you ever know one W. C. Caruthers, a deputy surveyor? If so, when and where did he live and hold office as such deputy surveyor?

A. M. CARTER AND
WELLBORB, LEAKE & HENRY,
Solicitors for Pl'ffs.

Service of within accepted, and we consent that the depositions of any of the witnesses named in the notice may be taken in Travis

county, Texas, by any officer of said county authorized by the laws of the State of Texas to take and return depositions. Time waived.

(Signed) SAWNIE ROBERTSON,
Solicitor for Def'd'ts.

308 *Cross-Interrogatories to Morris, Dollarhide, Starr, Arnold, Moore, Walker, Baker, & Allen, Witnesses for Plaintiffs.*

Cross-int. 1st. If you have stated that you are acquainted with the handwriting or signatures of Finess T. Roberson or Robertson, Oscar Engledow, George Allen, and H. B. Dance or either of them, please state the last time you saw either of them write anything or saw anything that you know was written by either of them. Where are each of said parties now?

(Signed) SAWNIE ROBERTSON,
Def'd'ts' Solicitor.

Cross-Interrogatories to Robert Elgin and Alfred Groom.

Cross-int. 1st. How do you know that there was any thing or paper attached or fastened to the Finesse Roberson certificate when it came into the land office, in 1855 or about that time? How do you — but that the paper referred to has not been attached to said certificate, and who by? When were you last employed in the land office?

Cross-int. 2nd. What was the custom in the land office of Texas in 1855 and for a few years previous to and after said year as to where file-marks on certificates were placed? Were the file-marks ever placed on the envelope containing the certificate or on a piece of paper filed with, attached to, or enclosing it? If yea, please state about the proportion of times the file-mark was placed on the certificate itself and on the envelope or piece of paper attached to or accompanying it.

309 Cross-int. 3rd. When was the pretended transfer on the back of the Finess Roberson certificate first discovered and who by? Who was said transfer to, and why was it not sooner discovered by such person?

(Signed) SAWNIE ROBERTSON,
Def'd'ts' Solicitor.

Cross-Interrogatories to J. P. Smith.

Cross-int. 1st. Where do you live now and how long have you lived at such place? What is your occupation? Did you ever engage in any way in the land business; if yea, where at and who with? Were you ever engaged or interested in any land transaction with any person by the name of Cundiff; if yea, which one of the Cundiffs, and what was the nature of the transaction?

Cross-int. 2nd. Where is the person who you say told you about the pasting or placing of a piece of paper on the Finess Roberson certificate now? Who was present when he told you what you have testified about in answer to Int. 4th? Where did he tell you this,

and when? How long had you known him at that time? Where did he live at that time and where did you live? How did plaintiffs find out that he told you this and when did they find it out? Did said person tell you this as a secret or publicly? If as a secret, how did you come to tell it? If publicly, give the name and residence of some one beside yourself who heard it.

Cross-int. 3rd. How long have you known the Cundiffs, and what interest has each of them in this suit? Do you not know that the deed to James J. R. Cundiff was only made to give the Federal court jurisdiction of this case and thereby avoid a trial where they are known?

(Signed) SAWNIE ROBERTSON,
Solicitor for Def'd'ts.

310 JAMES MORRIS, a witness named in said commission, being first duly sworn, deposes as follows:

1st Int. My name is James Morris; my age, 52 years; my residence, Little River county, Arkansas; my occupation is a farmer and ferryman,

Int. 2nd. I was well acquainted with Phiness Y. Roberson *alias* Finess Y. Roberson. I did not know Oscar Engledow, George Allen, and H. B. Dance or either of them. I only knew Phiness Y. Roberson *alias* Finess Y. Roberson. I knew him (Roberson) in Sevier county, Arkansas, from about 1847 till his death. He died about 1863, during the war. He died in Sevier county, Arkansas.

Int. 3rd. I was well acquainted with the signature and writing of Phiness Y. Roberson, having often seen him write his name and other writings; was familiar with his handwriting from the time of my first aquaintance until his death.

Int. 4th. I have examined a certain transfer shown to me by the officer taking my deposition, purporting to be a transfer of the headright certificate of Phiness Y. Roberson, and am of opinion that the signature of the said Phiness Y. Roberson indorced thereon is his *j*enuine signature. I know nothing of the other parties inquired of or their signatures.

Int. 5th. I only know the signature of Phiness Y. Roberson, as stated in my answer to the 3rd interrogatory.

6th Int. I have identified the transfer about which I have testified by placing thereon the initials of my name, J. M.

311 Int. 7th. I know nothing about the witness.

Int. 8th. I know nothing about Phiness Y. Roberson moving from Texas. I only knew him in the State of Arkansas. I can't say how long he lived in Arkansas.

Answers to Cross-Interrogatories.

Int. 1st. I cannot from recollection say at what time I saw Phiness Y. Roberson last write his name or any other writing, but will say that the last time I have seen anything written by him was to-day, when I looked upon his signature to the transfer identified by my

answer to direct interrogatory six, 6th, which I believe to be his genuine signature. Phiness Y. Robertson is dead. I know nothing of the other parties inquired about.

JAMES MORRISS.

At the same time and place came JAMES S. DOLLARHIDE, a witness on the part of the plaintiffs, who, being by me first duly sworn, deposes as follows:

Int. 1st. My name is James S. Dollarhide. I am 63 years of age. I reside in Little River county, State of Arkansas. My occupation is farmer and lawyer.

Int. 2nd. I was intimately acquainted with Phiness Y. Roberson for a great many years. I had no acquaintance with Oscar Engledow, George Allen, and H. B. Dance or either of them. I
312 first became acquainted with Phiness Y. Roberson in the then county of Miller, in the territory of Arkansas, now Sevier county, in the State of Arkansas, in the year 1824 or 1825. He is now dead. He died in the county of Sevier and State of Arkansas in the year 1863. I was intimately acquainted with him from our first acquaintance, in 1824 or 1525, until his death.

Int. 3rd. I was acquainted with the signature and handwriting of the said Phiness Y. Roberson from seeing him often write and sign his name from our first acquaintance until his death. I know nothing about the handwriting or signatures of the other parties inquired about.

Int. 4th. I have examined a certain transfer shown to me by the officer taking my depositions, purporting to be a transfer of the headright certificate of the said Phiness Y. Roberson, and am of the opinion that it is the genuine signature of the said Phiness Y. Roberson.

Int. 5th. I only know the signature of Phiness Y. Roberson to said transfer, as stated in my answer to the 3rd interrogatory.

Int. 6th. I have identified the transfer about which I have testified by placing thereon the initials of my name, J. S. D.

Int. 7th. I know nothing of the c-aracter of the witnesses to said transfer. Phiness Y. Roberson moved from Arkansas to Texas the year 1835, & to the best of my recollection he moved back to Sevier county, in the State — Arkansas, in the year 1842, where he resided until his death, in the year 1863.

313 *Answers to Cross-Interrogatories.*

Int. 1st, fi-st cross. The last time I saw Phiness Y. Roberson write was some time previous to his death, in the year 1863. The last time I saw anything written by him was this day, which is his signature to the transfer, upon which I have indorced the initials of my name, J. S. D., on the back of certificate No. 127.

JAMES S. DOLLARHIDE.

STATE OF ARKANSAS, }
County of Little River. }

I, Louis W. Dollarhide, a duly commissioned and acting notary

public in and for the county and State aforesaid, do certify that the foregoing depositions of James Morris and James S. Dollarhide *was* taken before me and *was* read to and subscribed by them in my presence at the time and place and in the action mentioned in the caption, the said James Morriss and James S. Dollarhide having been first duly sworn by me that the evidence they should give in the action should be the truth, the whole truth, and nothing but the truth, and their statements reduced to writing by me in their presence, neither party in person or by attorney being present at the examination.

In witness whereof I have hereunto set my hand and affixed my official seal the day and date first aforesaid.

[SEAL.] LOUIS W. DOLLARHIDE,
Notary Public within and for the County of Little River & State of Arkansas.

(Other depositions of James S. Dollarhide will be found on page 370, & direct & cross-int'ys for same on page 361.)

314 Interrogatories to J. H. Bradshaw, a resident of the Chickasaw Nation, Indian Territory, and a witness for the defendants in the above numbered and entitled suit.

1st. State your name, age, and place of residence.

2nd. Are you acquainted with the parties to this suit or either of them and which of them?

3rd. Did you ever live in Sevier county, Arkansas? If so, state when and how long you lived there.

4th. Were you ever acquainted with Finess Robertson, Dennis Trammell, David Trammell, H. G. Rind, and David Farron or either of them? If so, state when, where, and how long you knew each of them.

5th. Are Finess Robertson, Dennis Trammell, David Trammell, H. G. Rind, and David Forran living or dead? If any of them are living state where they live; if any of them are dead state when they died.

6th. Did H. G. Rind and David Faron or either of them ever hold any office or offices in Sevier county, Arkansas? If so, state what office each held and when and how long he held such offices.

7th. Do you know the handwriting of H. G. Rind, David Farron, Daniel Trammell, and Finess Robertson or any one of them? If so, state each one that you know the handwriting of, and state
315 how you became acquainted with his handwriting.

8th. Have you at hand a written transfer of a Texas land certificate from Finess Robertson to Dennis Trammell, dated May 12th, A. D. 1885, signed Finess Robertson, witnessed by J. H. Bradshaw and David Trammell, and purporting to have been executed in Sevier county, Arkansas? If so, identify said transfer in your answers, and mark it so that it can be identified, and state how you have marked it.

9th. Did you ever see said transfer before? If so, state where,

when, and under what circumstances you first saw said transfer and how often have you seen it since.

10th. Do you know who wrote the name J. H. Bradshaw as a witness to said transfer? If so, state who wrote it, where he wrote it, at whose request he wrote it, and the circumstances under which it was written.

11th. Do you know who wrote the name Daniel Trammell as a witness to said transfer? If so, state who wrote it, when and where he wrote it, and at whose request it was done and your means of knowing.

12th. Do you know who wrote the name Finess Robertson to said transfer? If so, state who signed said name to said transfer, when and where he signed it, and your means of knowing.

13th. State all that you may know relative to the making, signing, or delivery of said transfer, if anything, as fully as if thereto specially interrogated.

316 14th. State all that you may know, if anything, relative to the transaction or sale mentioned in said transfer as fully as if thereto specially requested.

15th. Is there any writing indorsed on or attached to said transfer in the handwriting of H. G. Rind and David Faron? If so, state what writing is in the hand of said Rind and what writing is in the hand of said Faron and your means of knowing.

16th. Do you know or can you set forth any other matter — other thing which may be of benefit or advantage to the parties at issue in this cause or either of them or that may be material to the subject of this your examination or the matter in question in this cause? If yea, set forth the same fully and at large in your answer.

DAVIS & GARRETT &
SAWNIE ROBERTSON,
Solicitors for Defendants.

Cross-Interrogatories to J. H. Bradshaw.

X 1st. Describe particularly in what part of the Chickasaw Nation you live; what is your post office, and in or near what town or village you live. Name a half dozen of your nearest neighbors. State how long you have lived at that place. State what is your age. State where you were born. State all the States and counties — you have lived and in what year. Are you a married man? Have you any connection with an Indian; and, if so, what?

317 X 2nd. If you state you ever knew Finess Robertson, say in what years you knew him and what was his age then. Was he married or single? How many children did he then have and what were their names aad places of residence? Were his daughters married; and, if they were, what was their husbands' names? If you say you saw the transfer referred to in direct interrogatories signed, state at what particular place it was signed. Who was present? How far was it from where you lived? How did you happen to be present? How long did you live in Sevier county

Arkansas, after that? How long have you lived at your present place of residence? Who wrote the transfer?

X 3rd. Are Finess Robertson, Dennis Trammell, David Trammell, H. G. Rind, and David Foran living or dead? If dead, when and where did each one die, and, if living, where does each one now live? When did you last see each one of them, and where?

X 4th. Have you any children? And if you have, state their names and places of residence. Have you any married daughters? If you have, state the names of their husbands and places of residence. Did you have a wife living when you lived in Sevier county, Arkansas; and, if so, is she now living or dead?. If dead, when did she die? How many children did you have when you lived in Sevier county, Arkansas? State their names and ages then. Are you related to Dennis Trammell by blood or marriage? And, if so, state how.

X 5th. How often did you ever see Finess Robertson write? When he signed a transfer for said certificate did he not then or about that time speak of having previously sold it, and what
318 did he say about the person to whom such sale was made and the time of the same?

X 6th. Will you give the names of some of the best-known citizens of Sevier county, Arkansas, at the time you lived there, whom you knew and who knew you?

WELLBORN, LEAKE & HENRY,
Solicitors for Complainants.

We save all legal objections to these interrogatories, and especially except to the want of a specific or better statement of the place of residence of this witness.

WELLBORN, LEAKE & HENRY,
Solicitors for Complainants.

319 Answers and depositions of J. H. Bradshaw, a resident of Pontatoc county, Chickasaw Nation, Indian Territory, to the attached direct and cross interrogatories taken before B. F. Perry, clerk of the county court in and for the said county of Pontatoc, Chickasaw Nation, Indian Territory, in accordance with the annexed commission issued in the above numbered and entitled suit by the clerk of said United States circuit court, at Dallas, Texas, and tested on the 9th day of August, 1882.

The said J. H. BRADSHAW, being first duly sworn, deposes as follows:

To the 1st direct Int. the said J. H. Bradshaw answers: J. H. Bradshaw; aged fifty-five years, and resides in Pontotoc county, Chickasaw Nation, Ind. Ter.

To the 2nd direct Int. said J. H. Bradshaw answered: I am not acquainted with any of the parties to this suit.

To the 3rd direct Int. said J. H. Bradshaw answers: I lived in Sevier county, Arks., from my birth until 1856, making in all about 29 years.

To the 4th direct Int. said J. H. Bradshaw answered: I was acquainted with all of the parties named in the interrogatory. I knew Finess Robertson, H. G. Rind, and David Foran, in Sevier county, Arks., from the time I could recollect till about the time they died. I became acquainted with Dennis Frammell and David Frammell in Sevier county, Arks., about the year 1839. They then lived in Crawford county, Ark., but afterwards moved to Sebastian county, Ark.

To the 5th direct interrogatory said J. H. Bradshaw answered: The parties mentioned in this interrogatory are all dead.
320 Finess Robertson died in Sevier county, Arks., about 1859. David Frammell was killed in 1863 in Sebastian county, Ark. David Foran died in Polk county, Ark., some time during the war. H. G. Rind died in Polk county, Ark., soon after the war. Dennis Frammell died in 1869 or 1870 in Sebastian county, Ark.

To the 6th direct Int. said J. H. Bradshaw answered: David Foran and H. G. Rind each held office in Sevier county, Ark. H. G. Rind was elected county clerk for said county in 1852 and held that office till about the time the war commenced, when he was elected county judge. When I could first recollect David Foran was county clerk of Sevier county, Ark., and, after holding said office for many years, he was elected county judge, and continued to act as county judge till succeeded by H. G. Rind about the year 1860. In 1855 David Foran was county judge and H. G. Rind was clerk.

To the 7th direct Int. said J. H. Bradshaw answered: I know the handwriting of each of the parties mentioned in this interrogatory. I became acquainted with the handwriting of each of them by seeing him write.

To the 8th direct Int. said J. H. Bradshaw answers: I have at hand and before me the written transfer mentioned in the interrogatory, signed, dated, and attested, as set forth in said interrogatory, and purporting to convey to Dennis Frammell Finess Robertson's head-right certificate for a league and labor of land, No. 127, issued by the board of land commissioners of Houston county, Texas. Said written transfer is indorsed: Filed. 591. 1st class. "Finess Robertson" to Dennis Trammell. Transfer. 1 lea. & labor
321 Filed 7th Aug., '55; and, in order to better identify said written transfer, I have written my name across the above indorsement.

To the 9th direct Int. said J. H. Bradshaw answers: Yes; I first saw said transfer at my house in Sevier county, Ark., on the 12th day of May, 1855, at the time it was written, signed, witnessed, and delivered. I never saw said transfer afterwards till October 4th, 1882.

To the 10th direct Int. said J. H. Bradshaw answers: Finess Robertson was a cousin of mine. About the year 1832 or 1833, when I was a child, he moved to Texas. After remaining in Texas for several years he returned to Sevier county, Ark., but owing to his settlement in Texas he became entitled to some Texas land certificates. In 1855 David Frammell, a nephew of Dennis Frammell, lived with me and made a crop with me in Sevier county, Ark. Dennis Fram-

mell was a trading man, and some time in the spring of 1855 he purchased of Finess Robertson said Robertson's Texas land certificate, and the parties came to my house to write the transfer. The transfer was written at my house by Dennis Frammell, was signed by Finess Robertson, and David Frammell and myself signed transfer as witnesses in the presence of and at the request of Finess Robertson. I wrote the name "J. H. Bradshaw" under the circumstances above mentioned.

To the 11th direct Int. said J. H. Bradshaw answers: Yes; David Frammell wrote the name David Frammell as a witness to said transfer at my house in Sevier county, Arkansas, May 12th, 1855, at the request of Finess Robertson. I was present and saw him sign said transfer.

322 To the 12th direct Int. said J. H. Bradshaw answers: Yes; Finess Robertson signed the name "Finess Robertson" to said transfer, at my house, in Sevier county, Arkansas, on the 12th day of May, 1855. I was present and saw him sign said transfer.

To the 13th direct interrogatory J. H. Bradshaw answers: A few days after the signing of the said transfer David Trammell went with Dennis Trammell to Paraclifta, the then county-seat of Sevier county, to prove up the transfer. I then lived about six miles from Finess Robertson and about twenty miles northwest from Paraclifta.

To the 14th direct Int. said J. H. Bradshaw answers: I do not now remember all that Dennis Frammell paid Finess Robertson for said land certificate, but I know that he paid him a house and some money, but the exact amount I do not now recollect.

To the 15th direct Int. said J. H. Bradshaw answers: Yes; there are two certificates attached to said transfer in the handwriting of G. H. Rind, dated May 15th, 1855, and one in the hand of David Foran, dated July 3rd, 1855.

To the 16th direct Int. said J. H. Bradshaw answers: Finess Robertson was a cousin of mine. He was known as Finess Robertson; but he sometimes signed his name P. Y. Robertson and sometimes Phiness Y. Robertson, and sometimes Phiness Robertson. He signed the above transfer "Finess Robertson," for the purpose, I think, of making it correspond with the certificate.

323 To the 1st cross-int. said J. H. Bradshaw answers: I resided in the east portion of Pontotoc county, Chickasaw Nation, Indian Territory, about one mile southwest of the town of Stonewall and about 35 miles west of Atoka. Stonewall is my post office. I have lived here four years, C. C. Rooks, William Cochran, Spencer Pressgrove, H. S. Brown, William L. Byrd, John Sorrell, and John Huggins are among my nearest neighbors, and all within a mile of me. I am 55 years of age; was born in Sevier county, Arkansas. I have always lived either in Arkansas or the Indian Territory. I lived in Sevier county, Ark., till 1856; then I moved to Sebastian county, Ark., where I lived until 1862, when I moved to Montgomery county, Ark., and in 1863 I returned to Sevier county, Ark., and lived there until 1866, when I again moved to Sebastian county and lived there until 1868, when I moved to Scott county, Ark., where I lived till 1874, when I moved to Pontatoc

county, Chickasaw Nation, where I have lived ever since. I am a married —. I have no connections with Indians.

To the 2nd cross-int. said J. H. Bradshaw answers: I first knew Finess Robertson when I was a child in Sevier county, Ark., before he moved to Texas. He was then a middle-aged man, was married, and had children older than I was. After he returned to Sevier county I knew him and his family well, and was frequently at his house. When I first knew him—that is, before he went to Texas—he had two or three children who were small, and none of them were married. He had seven or eight children in all. His sons were William and Finess; that I now remember. They all lived in Sevier county when I last heard from them. His daughters that I now remember were Matilda, who married Mr. Greenwood, and after his death married Mr. Dykes; Ela, who married Mr. Brown, and Nancy, who was not married when I last heard from them. They all lived in Sevier county when I last heard from them. There was another child or two, but I do not now re-
324 member their names. The transfer was signed at my house in Sevier county, Arkansas. It was written by Dennis Frammell. Myself, Dennis Frammell, David Frammell, Finess Robertson, my wife, and my sister-in-law, Ellen Smoot, were present when the transfer was signed. I lived in Sevier county about a year after this. I have lived at my present place for four years.

To the 3rd cross-int. said J. H. Bradshaw answers: The parties mentioned in this interrogatory are all dead. I last saw Finess Robertson in Sevier county in 1856, about the time I moved to Sebastian county. I last saw Dennis Frammell in 1869 or 1870 in Sebastian county, Arkansas, a short while before his death. I last saw David Frammell in Sebastian county in 1862; G. H. Rind at Paraclifta, Sevier county, in 1863 or 1864, and David Foran, in 1858, at Dallas, Polk county, Arkansas. For further answer I refer to my answer to 5th direct interrogatory.

To the 4th cross-int. said J. H. Bradshaw answers: I have seven children—Susan, Fanny, Albert, Joseph, Mary, Jessie, and Nancy—all of whom are single and are living with me except Fanny, who is married to William Twidwell, and they lived in Stonewall, Chickasaw Nation. I had a wife when I lived in Sevier county, Arkansas, and she is still living with me. I then had two children, Susan and Willie, the latter of whom has since died. Susan was then about two years old and Wiley about 6 months old. My wife and Dennis Frammell's wife were sisters. I was not otherwise related to either of the Frammells.

To the 5th cross-int. said J. H. Bradshaw answers: I saw Finess Robertson sign his name frequently, but cannot state the number of times. I never heard him say or intimate that he ever sold his land certificate to any one except Dennis Frammell.

325 To the 6th "*direct*" Int. J. H. Bradshaw answers: Capt. John McKom, Stephen Redden, J. S. Dollarhide, James Loch, Matt. Loch, Judge Steel, James Coulter, and Samuel Wilson.

J. H. BRADSHAW.

CHICKASAW NATION, }
Pontatoc County. }

I, B. F. Perry, cl'k of the county court in and for the county of Pontatoc, in the Chickasaw Nation, Indian Territory, the same being a court of record having a seal, do hereby certify that the foregoing answers of the witness, J. H. Bradhore, were taken before me and were subscribed and sworn to before me by the said witness, J. H. Bradshore; to certify which I hereto set my hand and seal of office this 13th day of October, 1882.

B. F. PERRY,
[SEAL.] *County Clerk Pontatoc County, C. N., I. T.*

326 Interrogatories propounded to Lucy C. Underwood, John Underwood, and Fannie W. Grider, who reside in the county of ——, State of ——, witnesses for the complainant.

Int. 1st. What is your name, age, and residence and occupation?

Int. 2nd. Are you in any manner, and in what, interested in this suit, and are you related to either, and which, of them and how?

Int. 3rd. Did you or either of you know Warner L. Underwood? If yea, when, how long, where did he live while you knew him, when and where did he die, when did he live in Texas and where, why did he leave; did he propose returning or go to stay, and why did he not return?

Int. 4th. This suit is about a league and labor of land or 4,605 acres of land located and patented by virtue of a certain head-right land certificate, No. 127, issued by the board of land commissioners of Houston county, Texas, on the first day of March, A. D. 1838, to Finesse Y. Roberts or Phinias Roberson and claimed to have been purchased by Warner L. Underwood from said Roberson on the 5th day of March, A. D. 1838, at the town of Nacogdoches, Texas. Please state whether or not you or either of you have the papers of said Warner L. Underwood and whether or not there is any deed, transfer, or letters relating to said land certificate among his papers. If you have not made search therefor please do so now. Have you done so? If you have, please attach such papers to your answers and mark them for identity. What became of Warner L. Underwood's title papers to his Texas lands, if you know? Please state whether or not Warner L. Underwood ever claimed any
327 land in Texas. If so, when and for how long a time did he claim same; what did he do with same, or what did he propose doing with same, and did anything prevent him from carrying his purpose out? If yea, what was it and when did it occur?

Int. 5th. What was the occupation of Warner L. Underwood, and especially while he was in Texas?

Int. 6th. When did Warner L. Underwood die? Did he leave any widow? If yea, when was he married to such lady. Has she married since her husband's death, and is she living or dead?

Int. 7th. Did Warner L. Underwood leave any child or children or the descendants of any of his deceased children at his death? If yea, tell their names, give their ages, when born; if any were

girls and have married since, give the name of their husband and when they were married; if any of said Warner L. Underwood's children have died since he died, give the names of such, and when they died, and the names of his wife and children, and the ages of his children, and whether the said wife is still living and single.

Int. 8th. Do you know whether or not Warner L. Underwood had any agent or attorney in Texas to look after his land? If yea, who was he, and when was he the agent or attorney of said Underwood?

A. M. CARTER,
WELLBORNE, LEAKE AND HENRY,
Solicitors for Complainants.

328 *Cross-Interrogatories to All Witnesses.*

Cross-int. 1st. How long was it after Warner L. Underwood left Dr. J. N. Head's house in Sumner county, Tennessee, where he was being treated for paralysis, before his death occurred?

(Signed) SAWNIE ROBERTSON,
Solicitor for Defendants.

The deposition of Fannie U. Grider, taken upon interrogatories filed herewith, at her residence, in the city of Bowling Green, county of Warren and State of Kentucky, on 22nd May, 1882, to be read as evidence on behalf of pl'ff in a suit now pending in the circuit court of the United States for the northern district of Texas, at Dallas, wherein Ida Underwood is plaintiff and W. J. Dugan is defendant.

Witness, first sworn, says in answer to interrogatories:

In answer to Int. 1st I say: My name is Fannie Underwood Grider; my age is 48 years; my residence, Bowling Green, Warren county, Ky., and occupation house-keeper.

Ans. to Int. 2d. I am not interested in this suit pecuniarily. Ida Underwood was the wife of my bother, Warner Underwood, and deceased; she is, however, dead.

Ans. to Int. 3. I did know Warner L. Underwood; he is my father. He lived in Bowling Green, Ky., at the time of his death, on 12th March, 1872. He never changed his residence from Bowl-
329 ing Green, Ky., but was frequently in Texas between the years of 1830 and 1840. I know he was there in 1837 and 1839. He was speculating in lands in Texas and made frequent trips to Texas to give attention to his property there. It was once his intention to go to Texas to live, but the death of his father-in-law, who left an embarrassed estate, made it necessary for him to remain here.

Ans. to Int. 4th. I have no papers of Warner L. Underwood pertaining to his purchases or sale of his Texas lands. His title papers were given by him to a man by the name of Roberson, in Texas, whose initial I do not know, who claims to have lost them when crossing a river in Texas; he, being a horseback and having the papers in a pair of saddle-pockets, dropped them in the river. He did claim a large quantity of land in Texas. He claimed them from the

first visit he made to Texas until the time of his death; he bought the lands on speculation. Some he sold and some his estate still owns. The death of his father-in-law, in 1838, made it necessary for him to abandon the idea of his removal from Bowling Green, Ky., to Texas.

Ans. to Int. 5th. Warner L. Underwood was a practicing attorney.

Ans. to Int. 6th. He died on 12th March, 1872; he did leave a widow, Lucy C. Underwood; they were married on 31st August, 1830; she still survives him and is unmarried.

Ans. to Int. 7th. He left eight children when he died—Fannie U., who married B. C. Grider on 31st May, 1852; born 15th March, 1833; Juliett U., who married W. W. Western in 1859; born
330 16th October, 1835; Lucy U., born 21st June, 1838, who married F. J. McCan in 1857; Johanna L. Underwood, born 5th Nov., 1840, and married C. A. Nazro in 1870. Warner Underwood was born 1st Dec'r, 1845, and died 16th Oct'r, 1874; he married Ida Owens in 1869, and she died on 16th Oct'r, 1881, leaving two children, Josie and Warner, Josie being eleven years old and Warner nine years; Henry L. Underwood, born 22d February, 1848, and married in 1879; John Underwood, born 17th Jan'y, 1854; Mary U., born 27th Jan'y, 1857; she married S. M. Poyntz in 1877. Warner Underwood died since the death of his father, Warner L. Underwood, on 16th Oct'r, 1874; he left a widow and two children—Josie, aged eleven years, and Warner, nine years; he married Miss Ida Owens, who after his death married Dr. Aldison, and died three weeks after her marriage, on 16th Oct., 1881.

Ans. to Int. 8th. My father, Warner L. Underwood, had agents in Texas to attend to his business, but I do not know where or who the said agents were.

Cross-Interrogatories.

In answer to cross-interrogatory 1 say: My father died in about two years after he left Mr. Head's house, in Tennessee.

FANY UNDERWOOD GRIDER.

Witness claims one day's attendance, $1.50.

STATE OF KENTUCKY, } *ss:*
Warren County, }

Personally appeared before me Fanny U. Grider, who gave the foregoing depositions at the time and place stated in the caption. Said witness was first — by me to testify the truth, the whole truth, and nothing but the truth, and her statements reduced to writing by me in her presence and was read to her by me and subscribed by her in my presence; and I further certify that no one was present at the examination.

Given under my hand and notarial seal of office this 22nd May, 1882.

331 My commission as notary will expire on 28th January, 1884.

[SEAL.] GEORGE B. PAYNE,
Notary Public.

332 *Direct Interrogatories Propounded by Complainants to Y. S. McKinney, who Resides in the County of Grayson, State of Texas.*

Int. 8th. State every fact known to you about the existence or possession of the head-right league and labor certificate No. 127, issued to Finnisse Robertson, and about any locations of the same. State how you came to know about it and what was said about it by any person and what person and what became of the location and certificate. In whose possession was it when you last saw it? What transfer, if any, was then indorsed on it? Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties in this cause or either of them or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answers.

(Signed) A. M. CARTER,
WELLBORN, LEAKE & HENRY,
Solicitors for Complainants.

333 *Cross-Interrogatories Propounded to Y. S. McKinney, a Resident of the County of Grayson, State of Texas, a Witness for Complainants.*

Cross-int. 1st. Have you ever talked with W. H. Cundiff about any of the matters testified about by you; if yea, how often, and what was said by him to you about your testimony?

HARE & HEAD,
SAWNIE ROBERTSON,
Solicitors for Dugan et al.

334 *Answers of the Witness.*

Y. S. McKINNEY, being first duly sworn, to first Int. he answers: I remember to have seen the head-right league and labor certificate issued to Finissee Roberson, together with the field-notes of the Finissee Robertson survey made in Grayson county, Texas. This was soon after I entered upon the duties of district surveyor in said county, in the year A. D. 1852. The field-notes of said Robertson survey were then of record in Grayson county, Texas, and the certificate was, I believe, then on file in the district surveyor's office in said county. My attention was first called to said certificate and field-notes by James P. Dumas, who was my predecessor in the office of district surveyor.

The certificate was located in Grayson county, Texas; but my recollection is that the parties neglected or otherwise failed to perfect the location, and the same land embraced in the field-notes of the Robertson survey was afterwards located under some other certificate during my term of office as district surveyor. I believe the later survey was made on the application of Bill Hunt and A. M.

Alexander through one — Softly. I did the surveying and recording at the instance of James P. Dumas under the new certificates.

I do — now know what became of the Robertson certificate, nor do I now know where it is or whether it was ever located elsewhere. I have no knowledge of any person having possession of the Finissee Robertson certificate further than I have stated, that it was in the district surveyor's office, in Grayson county, when I took possession of the office and must have been in the office while James P. Dumas was surveyor, who was my predecessor. I do not now remember to have noticed any transfer on the Robertson certificate.

To the Int. 8th he answers: That there are no other mat-
335 ters or things known or remembered that would be of any benefit to either party.

To the cross-interrogatories he answers: I never had a conversation with W. H. Cundiff in regard to my testimony. If I ever spoke to him on any subject I do not now remember it, and believe I never met him.

Y. S. McKINNEY.

THE STATE OF TEXAS, }
Grayson County. }

I, J. T. Cunningham, a notary public in and for Grayson county, Texas, do hereby certify that the foregoing answers of Y. S. McKinney, the witness before named, were made before me and were sworn to and subscribed before me by the said witness.

Given under my official signature and seal this 25th day of May, A. D. 1883.

J. T. CUNNINGHAM,

[SEAL.] *A Notary Public in and for Grayson County, Texas.*

336 *Interrogatories Propounded by Plaintiffs to A. E. Gossett and D. H. Edens, of Houston County, Texas.*

Int. 1st. What is your age and place of residence? Did you ever reside in Houston county, Texas; and, if so, when and for how long?

Int. 2nd. Did you ever know a person named Phineas Robertson or Phiness Roberson or any one of like name; and, if so, when and where did he reside and in what year did he reside at such place, and when did he leave and where did he go to? State particularly all you know about him, and state whether you ever knew more than one person by any such name. State if the person you refer to had a family, and state if he ever became entitled to receive or did in fact receive a land certificate from the Republic of Texas; and, if he did, state for how much. State how well you were acquainted in Houston county. Do you know anything about said Robertson locating or selling his head-right certificate? And, if you do, state all you know. State whether he moved out of the State of Texas and whether he ever returned to said State.

Int. 2nd. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue

in this cause or either of them or that may be material to this subject of this your examination or the matters in question in the cause? If yea, set forth the same fully and at large in your answers.

(Signed) A. M. CARTER,
WELLBORN, LEAKE & HENRY,
Att'ys for Plaintiffs.

We accept service of above and agree that the answers may be taken and returned without a commission by any officer au-
337 thorized by the statutes of Texas to take and return depositions, this 5 May, 1882.

DAVIS & GARNET,
HARE & HEAD,
SAWNIE ROBERTSON,
Solicitors for Defendants.

338 *Cross-Interrogatories to A. E. Gossett and D. H. Edens.*

1st. When did you come to Texas? Where did you move from, and where have you lived since you have been in Texas?

2nd. When, where, and how often did you ever see Phiness Robertson? What was his full name? How did he sign his name, and how do you know he signed his name in that way? Where did said Robertson come from? When did he come to Texas? How long did he remain in Texas? When did he leave, and where did he go to, and give your means of knowing these facts?

4th. Where did Robertson live while in Texas? Give the exact locality. What was his age at that time? What was his trade or profession? Was he married or single? If married, give the name of his wife, and state when and where he married her. Did said Robertson have any children? If so, state how many, and give their names and ages.

5th. Do you know one William H. Cundiff? If so, state when, where, and how long you have known him.

6th. About four years ago did you not answer a set of interrogatories — the suit of Robbins *et al. vs.* Underwood *et al.*, then pending in the district court of Montague county? Did you not then answer that you knew nothing about said Robertson's having sold or located a land certificate; that you did not know what said Robertson's full name was, and did not know how he signed his name?

339 7th. How often has William H. Cundiff ever talked to you about your evidence in this case?

HARE AND HEAD,
DAVIS & GARNET, AND
SAWNIE ROBERTSON,
Solicitors for Defendants.

340 Answers and depositions of Darius H. Edens and Andrew E. Gossett, of Houston county, Texas, to the accompanying interrogatories propounded to them.

Int. 1st. Witness Darius H. Edens, answering, says: On the 20th day of this month I will be 68 years old, and reside in Houston county, Texas, about fourteen miles northeast of Crockett. I came to what is now Houston county in the year 1833, four years before the county was organized, and have resided in said county ever since, except about four years that I resided in what is now Anderson county, Texas.

Int. 2nd. I knew a man named Phiness Roberson, but do not know whether he spelled his name Roberson or Robertson. He resided on the waters of San Pedro creek, in what was afterwards Houston county. To the best of my recollection, this was in the year 1836. He left San Pedro creek, to the best of my recollection, between 1837 and 1839, and I do not know where he went. I did not know but the one Phiness Roberson. He had a family—a wife and children. I do not know, of my own knowledge, whether he received a certificate or not. I was only tolerably well acquainted in what was then Houston county. Know nothing about the locating or selling this certificate. Have stated all I know about him as to his residence.

Int. 3rd. Have stated about all that I know material to this cause.

(Signed) D. H. EDENS.

341 *Witness Darius H. Edens Answers Cross-Interrogatories.*

Cross-int. 1st. I came to Texas in the summer of 1831, from the State of La. San Augustine, Anderson, and Houston counties.

Cross-int. 2nd. When I first became acquainted with him for a short time we both resided on the some farm, and I then saw him almost daily; afterwards I saw him frequently, and therefore cannot state when, where, and how often I saw him—Phiness Roberson—so far back as I know.

Cross-int. 3rd. Do not know how he signed his name; do not know. If I ever heard, have forgotten. Do not know how long he remained in Texas.

Cross-int. 4th. He lived while I knew him near where the town of Augusta is now located, about 16 miles northeast from Crockett. He was probably between 25 and 30 years old. He was a farmer, although he did not exert himself very much doing anything. He had a reputed wife and children; cannot give name of his wife because I have forgotten it; cannot state when and where he was married, because I do not know. I am under the impression that he had two or three children, but cannot give their names and ages, because I do not know them, at this late date.

Cross-int. 5th. I do. About the year 1856, in Houston county, Texas, and have known him ever since.

Cross-int. 6th. I think I did.

Cross-int. 7th. He inquired if I knew Phiness Roberson,
342 and when and where I knew him. If he ever mentioned the matter to me more than once I do not remember it.

D. H. EDENS.

Witness ANDREW E. GOSSETT, answering, says to—

Int. 1st. I am 71 years old and reside about two miles nearly east from Crockett, Houston county, Texas; have resided in Houston over 45 years.

Int. 2nd. I did. He resided in Houston county. It was in the year 1838 or 1839, and he then lived near Cincinnati, in Houston county, Texas; do not know where he went when he left Houston county. I only knew one Phiness Robertson or Roberson in Houston county. The Phiness Robertson I knew had a family consisting of a wife and children. The Phiness Robertson I knew was entitled to and did receive from the Republic of Texas a land certificate. To the best of my recollection it was for a league and labor of land. I think I knew at that date every man who resided in Houston county; know nothing in regard to the location or sale of his certificate; do not know where he went when he left, and know nothing in regard to his return, if he ever came back.

Int. 3rd. I am under the impression that the first abstract of title will show that a head-right certificate was issued to Phiness Robertson.

(Signed) A. E. GOSSETT.

343 Witness ANDREW E. GOSSETT, answering cross-interrogatories, says to—

Cross-int. 1st. I came to Texas in the year 1833 from the State of Tennessee, and lived in Washington county a little over one year, and all the balance of the time in Houston county.

Cross-int. 2nd. I served with Phiness Robertson in the Cherokee campaign in Texas in the year 1839, and was acquainted with him for several years, and saw him so often and in so many different places that it — impossible to answer fully as to "when, where, and how often" I saw him. I knew him as Phiness Robertson or Roberson; don't know that I ever saw him sign his name.

Cross-int. 3rd. I do not know where he came from to Texas, but am under the impression that it was from Ark. I only know that he resided in Texas 3 or 4 years; don't know when he left Texas, if he ever so left. As stated, I served with him, and afterwards I occasionally met him.

Cross-int. 4th. When I knew him he resided near Cincinnati, on the north side of Trinity river, in what was known as the White settlement. I suppose he was about 25 years old. He was a farmer. He was married; don't remember name of his wife, and knew nothing about their marriage. He had several children, to the best of my recollection, but it has been too long ago for me to recollect their names and ages.

Cross-int. 5th. Yes; since about the year 1855 or 1856, in Houston county, Texas.

Cross-int. 6th. Yes; think I did.

344 Cross-int. 7th. Don't think he ever talked to me but once, asking if I knew Phiness Roberson and, perhaps, stating that he would have my depositions taken.

(Signed) A. E. GOSSETT.

STATE OF TEXAS, }
County of Houston. }

I, Hilary W. Bruner, a notary public in and for said county and State, do hereby certify that the foregoing answers of Darius H. Edens and Andrew E. Gossett, the witnesses before named, were made before me and were sworn to and subscribed before me by the said witnesses respectively.

Given under my hand and official seal, at Crockett, Texas, this 10th day of May, A. D. 1883.

HILARY W. BRUNER,
[SEAL.] *Notary Public, Houston County, Texas.*

345 Interrogatories to A. M. March, a resident of Rusk county, Texas, in Ida Underwood *et al. vs.* Dugan *et al.*, in U. S. C. C., chancery, at Dallas.

1st. State your name, age, and place of residence.

2nd. Are you acquainted with the parties *of* this suit or any of them, and which of them?

3rd. Were you acquainted with Squire W. March? If, so, state when, where, and how long you knew him. Was Squire W. March related to you; and, if so, how related?

4th. This suit is concerning one league and labor of land in Montague county, Texas, patented to S. W. March, as the assignee of Finess Robinson, on the 8th day of August, 1855. Do you know where said land lies and how S. W. March acquired the same and the certificate by virtue of which the same was located and patented?

5th. Did you ever know one Dennis Trammell? If so, state when, where, and how long you knew him and the circumstances under which you formed his acquaintance.

6th. If you answer the fourth above interrogatory in the affirmative, state when, how, and under what circumstances said S. W. March acquired said certificate and land.

7th. If, in answer to the above interrogatories, you should say that you purchased said certificate for S. W. March at Austin, Texas, of Dennis Trammell, state how you happened to be at Austin and why you were there. State where S. W. March was at the time. State why you bought said certificate. State when you first knew of the existence of said certificate, and state what you paid for said certificate, if anything, and where, when, and to whom you paid it.

8th. Before purchasing said certificate did you have any one to examine said certificate and Dennis Trammell's title thereto? If so, state when and where and whom you employed to examine said certificate and the title of said Trammell thereto.

346 9th. Who was the commissioner of the general land office at that time? Before purchasing said certificate did you have the commissioner of the general land office to examine it and Dennis Trammell's title to the same? If so, state why you had the commissioner to examine the certificate and title, and what he told you, if anything, in reference to said certificate and title.

10th. Where did Dennis Trammell live and what business was he engaged in? Did he make S. W. March a transfer to said certificate? If so, state when and where and who wrote the transfer.

11th. When you bought the said certificate for S. W. March what did you do with the certificate and what disposition did you make of it and why did you buy the certificate for said March?

12th. At the time you bought said certificate for said S. W. March was there a transfer on the back of the same to Warren L. Underwood or to any other person? If not, state fully how you know that there was no transfer on said certificate. Describe fully the condition of said certificate. Was there any brown paper pasted over the back of said certificate? If not, state fully your means of knowing.

13th. At the time you bought said certificate for S. W. March what sort of title did you think you were acquiring for said S. W. March? Did you at that time learn or have any reason to believe that Warren L. Underwood and Joshua Robins or either of them or any other person except Dennis Trammell had or claimed to have any right to or interest in said certificate? If not, state why you did not.

14th. At the time you purchased said certificate for S. W. March did he, the said S. W. March, know or have any reason to believe that Warren L. Underwood and Joshua Robbins or either of them or any other person except Dennis Trammell had or claimed to have any right to or interest in said certificate? If not, state fully all the facts upon which you base that belief or opinion.

347 15th. Do you know who paid the patent and land office fees in order to obtain the patent to the land in dispute? If so, state who paid them, and when.

DAVIS & GARRETT AND
SAWNIE ROBERTSON,
Solicitors for Defendants.

Circuit Court of the United States for the Northern District of Texas, at Dallas.

I, A. J. Houston, clerk of the circuit court of the United States for the northern district of Texas, do hereby certify that the foregoing is a full, true, and correct transcript of direct interrogatories propounded by the defendants to A. M. March, witness for the defendants in case No. 22 and styled Ida Underwood *et al. vs.* H. J. Dugan *et al.;* all of which appears from the records of said court now in my office.

In testimony whereof I hereunto set my hand and affix the seal of

said court, at Dallas, Texas, this 14th day of March, A. D.
SEAL. 1882, and of the Independence of the United States of America the 106th year.

A. J. HOUSTON,
Clerk of said Court.

347¼ *Cross-Interrogatories Propounded by Complainants to A. M. March, of Rusk County, Texas.*

Cross int. 1st. What is your age and where do you reside? Are you a party to or in any way interested in this suit or are you related to any one who is? And, if so, explain how and in what degree.

Cross-int. 2nd. State when and under what circumstances you first saw the Finess Robinson land certificate and in whose possession it then was and what was then being done with it.

Cross-int. 3rd. Do you say positively and mean to be understood that at the date of your first seeing said land certificate there was no transfer of said certificate endorsed thereon and, that there was no paper or other substance attached thereto or so fastened on it as to obscure and cancel a transfer written or endorsed thereon? Do you say that at the time said certificate was returned to the land office of Texas with the field-notes of the land in controversy in this suit there was not a transfer of said certificate to Warren L. Underwood endorsed thereon? Do you say or mean to be understood that at the date of its being so returned to said land office there was not a piece of paper or some other substance so attached or fastened to said certificate as to conceal endorsements thereon?

Cross-int. 4th. Have you seen said certificate since it was filed in the land office; and, if so, how many times, when, where, and in whose presence. And state whether, at any time when you saw it, it had any endorsement on it or paper pasted over it; and, if either, state what it was and if the same was placed there after you first saw it; and if you state there was such endorsement or paper placed thereon, state, if you know, when it was done, who by, and
347½. for what purpose.

Cross-int. 5th. If you say that S. W. March acquired said certificate state what price he paid for it, how and when he paid it and who to, and whether at the time of purchasing and paying for it he obtained his deed or transfer thereto, and whether the same had not been located on the land in contest before he so purchased. Where was the certificate when he purchased? Was it delivered then or afterwards? And state the fair market value of the land on which it is now located.

Cross-int. 6th. State whether said S. W. March was an illiterate or an educated man. If he had a profession state what it was. If you state he purchased said land certificate or that it was purchased for him state his age at the time; state whether he was a cautious trader; state whether he was a man of property and a successful business man. Was he not a man of much above ordinary intelligence? Was he not a man of great mental cultivation and a man

of great capacity for business? Did said S. W. March ever have said certificate in his possession after he purchased it; and, if so, how often and for how long? If he did not have it in his possession after its purchase by or for him state who did; state every person in whose possession it was after its purchase by or for said March until it was returned to the land office, as far as you are able.

Cross-int. 7th. If you speak of examining said certificate at any time state in whose presence you made such examination and its result or what you ascertained.

Cross-int. 8th. If you in reply to direct interrogatories make any statement about any sale or transfer of said land certificate or of the land or of any part of the land located by it and now in con-
348 troversy you will state the date of such sale or transfer and whether it was before or after the issuance of a patent for said land; state whether such sale was written or verbal; state what was sold and what consideration was paid therefor; state whether a warranty or quitclaim title was made, and, if in your power to do so, attach a part of your answer to the original writing, if there was such, and, if you speak of any leases made by any one of said land or any part of the same, state if such lease or leases were in writing, and attach them or true copies thereof to your answer, if you can, and if you do not so attach any one of such leases, then state what quality of land each lease was for, where such land lies, how it is bounded, and for what length of time such lease was given and how and what possession was taken or held thereunder, if any, and by whom and for what years, stating at the same time your means of knowledge. Did the lessees or any of them live on the land in controversy or on an adjoining survey? State this as to each tenant.

Cross-int. 9th. Is it now a fact that only a small portion of said land has ever been actually occupied by said S. W. March or by any one claiming the same under or through him, and that the larger portion thereof has remained unoccupied since it was located by said certificate, and is it not a fact that the portion thereof claimed by the denizen of G. C. Dugan has never been occupied at all by any one? And if you say any portion of said land has been occupied by said S. W. March or G. C. Dugan or any one for or under them or either of them, then state who by and when and the metes and bounds held by each, and state your means of knowing and whether it was under a written or verbal lease or authority.

Cross-int. 10th. What is the present market value of said league of land?

Cross-int. 11th. What is the annual rental value of so
349 much of said league of land as has been actually occupied and enclosed?

Cross-int. 12th. Give a full statement of all improvements of a permanent nature put on said land within your knowledge, including the number of acres inclosed, and stating how inclosed, and the buildings or other improvements placed thereon, stating separately in every case the name of the person putting or having placed thereon such improvements, the character of each person's improve-

ments, the year when each was put there, and the present value of the same.

Cross-int. 13th. Where was the Finess Robertson certificate when you first heard of it or where you first saw it, when was it—what year—in whose possession was it, and how did Dennis Trammell come to learn of it, buy it, and sell it to S. W. March, and where did Dennis Trammell live at that time, and had you and he had any correspondence prior to said purchase in regard to it, and how soon after Trammell claimed to have purchased said certificate was it you saw him, and how did it happen or occur that you met him. Was it not by appointment and through a prior understanding? Where was the said land certificate on the following days and times, to wit: May 12th, A. D. 1855; June 23rd, 1855?

Cross-int. 14th. Did you ever see the said certificate in the possession of J. P. Dumas or did you ever hear him say he had it or are you in any way informed that he did have it; and, if you saw it in J. P. Dumas' possession or knew it to be in J. P. Dumas' possession or within his control, when was this; what had he to do with it; what did he tell you about the certificate, if anything, or about the transfer on the back of same; when and where did Dennis Trammell first get said certificate, and from whom and for what did you first confer with said Dennis Trammell or he with you about it?

350 Cross-int. 15th. How long after the certificate was located on the land in contest before the same was returned to the general land office? Is it not true that this Finess Robertson certificate had been located in Grayson county, Texas, prior to its being located on the land in contest, and did not J. P. Dumas have it for location in Grayson county, Texas, and did he not claim or have an interest in the land in Grayson county, Texas, on which said certificate was so located immediately after the said certificate was removed from the Grayson county location, and when and why was the said certificate so removed from the Grayson county location? When was it located first in Grayson county and who for?

Cross-int. 16th. Did you not know that S. W. March builded a residence or dwelling-house near the land in contest on the Scott survey and on a less eligible spot than he could have found on the Finess Robinson survey, and that he, S. W. March, refused to build on the land in contest and because he was not satisfied with his title to same? Did you not hear him make a statement to that effect? Were not the houses, fencing, and other improvements put on the land previous to the death of said S. W. March of a very cheap and inferior character, and do you not know or have you not heard him say in substance that his reason for not having better improvements put on the land was that his title to the land was unsatisfactory or disputed?

A. M. CARTER AND
WELLBORNE, LEAKE & HENRY,
Solicitors for Plaintiffs.

351 Circuit Court of the United States for the Northern District of Texas, at Dallas.

I, A. J. Houston, clerk of the circuit court of the United States for the northern district of Texas, do hereby certify that the foregoing is a full, true, and correct transcript of cross-interrogatories propounded by the plaintiffs to A. M. March, witness for the defendants, in case No. 22, and styled Ida Underwood *et al. vs.* H. J. Dugan *et al.*, all of which appears from the records of said court now in my office.

In testimony whereof I hereunto set my hand and affix the seal of said court, at Dallas, Texas, this 14th day of March, A. D. 1882, and of the Independence of the United States of America the 106th year.

A. J. HOUSTON,
Clerk of said Court.

352 To the first direct interrogatory said A. M. MARCH, the witness, answers: My name is A. M. March; my age is 55 years old; I now live in Montague county; I formerly lived in Rusk county, Texas.

Ans. to 2nd Int. I am acquainted only with S. W. March.

Ans. to 3rd Int. I was. I have known him for fifty years. I knew him first in North Carolina, then in Tennessee, then in Rusk county, Texas, up to the time of his death. He was. He was a brother of mine.

Ans. to 4th Int. I do. Said land lies on Red River, in Montague county, in the Spanish Fort Bend, Texas. By virtue of certificate patented to him. I know how he acquired the certificate by virtue of which the land was located and patented. I bought said land certificate from Dennis Tramble in Austin, Texas, for S. W. March, by virtue of which said land was patented to S. W. March.

Ans. to 5th Int. I did know Dennis Trammell. I think I first met him in the year eighteen hundred and fifty-five. I met him in Austin, Texas. I have never seen him since that time. I was in Austin in 1855 for the purpose of buying a land certificate for S. W. March. George Walton, who I had assisting me in purchasing said certificate, brought Dennis Trammell to me and introduced him to me as Dennis Trammell, and stated that he, Dennis Trammell, had a league and labor land certificate for sale. My business connection in the purchase of said certificate at that time was my means of forming his acquaintance.

Ans. to 6th Int. S. W. March acquired said certificate and land in the year A. D. 1855. I bought said land certificate from Dennis Trammell in Austin, Texas, in the spring or summer of A. D. 1855, by virtue of which said land was patented to S. W. March in the summer of 1855. He acquired said certificate by my going to Austin, Texas, and buying it for him.

353 Ans. to 7th Int. I went to Austin, Texas, for the purpose of buying a league and labor land certificate for S. W. March. S. W. March sent me. S. W. March was in Rusk county, Texas. S. W. March had previously bought a land certificate for a league

and labor of land, which I located on the Phinese Roberson league and labor of land on Red River, in the Spanish Fort Bend. Said certificate turned out to be a fraudulent certificate and would not patent. As soon as S. W. March found this out he sent me post-haste to Austin for the purpose of buying a genuine certificate to be located on said land in the place of the fraudulent one which would not patent. After I got to Austin I found out that S. W. March had written to George Walton to assist me in the purchase of a genuine league and labor land certificate. George Walton had posted up advertisements at different places in the town for such a certificate. Dennis Trammell, seeing these advertisements, brought us the Phinese Roberson land certificate and offered it to us for sale. I, before purchasing said certificate, examined it and Dennis Trammell's title thereto; I also had an attorney-at-law to examine said certificate and Dennis Trammell's title thereto, and we pronounced it a genuine certificate and Dennis Trammell's title also good to said certificate. I then carried said certificate to Stephen Crosby, commissioner of the general land office at Austin, Texas, and asked him to examine said certificate and Dennis Trammell's title thereto and see if they were all right. He said, after examining them thoroughly, that they were genuine and that if I would obtain a transfer from Dennis Trammell to S. W. March that he, Crosby, would issue a patent to S. W. March, as assignee of Phinise Roberson, in the spring or summer of A. D. 1855. I paid one thousand dollars in gold for said certificate in Austin, Texas. I paid for it at the time I bought it; I paid it to Dennis Trammell.

354 Ans. to 8th Int. I had said certificate and Dennis Trammell's title thereto examined before I bought it. In the spring or summer of A. D. 1855, I think. In Austin, Texas. I employed an attorney in Austin to examine said land certificate and Dennis Trammell's title thereto; I cannot remember his name at this time. I also had Stephen Crosby, commissioner of the general land office, to examine them.

Ans. to 9th Int. Stephen Crosby was commissioner at that time. I did. I had the commissioner of the general land office to examine said certificate, because I considered his opinion as good if not better than any one else that I could get with regard to the genuineness of the certificate and the title thereto. He, the commissioner, told me it was a genuine one, and that Dennis Trammell's title thereto — good. He told me if I would purchase said certificate and obtain a transfer from Dennis Trammell to S. W. March and locate it he would patent it to S. W. March as assignee.

Ans. to 10th Int. I do not know where Dennis Trammell lived. I do not know. He made S. W. March a transfer to said certificate. I think he made the transfer in the spring or summer of 1855 in Austin, Texas. I do not remember who wrote the transfer.

Ans. to 11th Int. When I bought the certificate I carried it immediately to Gainesville, Cooke county, Texas, for the purpose of locating it as soon as I could on the same land on which I had located the Alexander Cockron certificate, which had proved to be a fraudulent certificate and was located in Spanish Fort Bend, Montague

county. When I arrived at Gainesville I gave the Phinise Roberson certificate to Howeth, Twitly, and Colonel Montague, the surveyors, for the purpose of having it located on the same league and
355 labor of land that we had previously located under the fraudulent Alexander Cockron certificate in Spanish Fort Bend, Montague county, Texas. I bought the certificate in order to save the land it is located on.

Ans. to 12th Int. At the time I bought said certificate there was no transfer on it to Warren L. Underwood or any one else. I know there was no transfer on said certificate, because I had it in my possession and examined it closely, and if there had have been any transfer on it I would have been bound to have seen it. Said certificate was in very good condition, and was not soiled but very little. There was no brown paper attached or fastened to said certificate in any way. My means of knowing is from having it in my hands and examining it closely.

Ans. to 13th Int. I thought I was acquiring a good title for S. W. March. I did not at that time have any reason to believe that anybody except Dennis Trammell had any right, title, or claim to said certificate whatever, because there was no transfer on or about the certificate to show that anybody else had any claim to or interest in said certificate except Dennis Trammell.

Ans. to 14th Int. At the time I purchased said certificate for S. W. March he did not have any reason to believe or means of knowledge that Warren L. Underwood and Joshua Robbins or anybody else had any right, title, or claim to said certificate, for he, S. W. March, was in Rusk county, Texas, at the time I bought said certificate in Austin. My means of knowing that S. W. March did not know anything of the above facts is because he had no connection whatever with the purchase of said certificate.

356 Ans. to 15th Int. I paid the patent and land office fees for S. W. March in order — obtain a patent to the land. I paid the fees at the time I filed the certificate and field-notes in the general land office.

(Signed) A. M. MARCH.

STATE OF TEXAS, }
County of Montague. }

I, L. C. McNatt, a notary public in and for the county of Montague and State of Texas, do certify that the foregoing answers of the witness, A. M. March, were taken before me and were signed and sworn to by the said A. M. March before me.

To certify which I hereto set my hand and seal of office, at office, in the town of Burlington aforesaid, this the 20th day of May, A. D. 1882.

[SEAL.] (Signed) L. C. McNATT,
Notary Public for Montague Co., Texas.

357 To the cross-interrogatories the witness, A. M. MARCH, answers as follows:

Ans. to 1st cross-int. The witness, A. M. March, answers: My age is 55 years. I reside in Montague county, Texas. I am not. I am. I am a brother to S. W. March.

Ans. to 2nd cross-int. I first saw the Finise Roberson land certificate in the spring or summer of A. D. 1855. It was brought to me by Dennis Trammell for sale in Austin, Texas. It was at that time in the possession of Dennis Trammell, and he, in response to an advertisement for such a certificate by George Walton, offered it to me for sale.

Ans. to 3rd cross-int. I do. There was no paper or any other substance attached to said certificate so as to conceal or cover any transfer indorsements or anything else thereon. When the certificate was returned to the land office of Texas by me with the field-notes there was no transfer on it to Warren L. Underwood or anybody else. I do say that at the time said certificate was returned to the land office there was no paper or other substance attached thereto so as to conceal anything.

Ans. to 4th cross-int. I have never seen said land certificate since I filed it in the land office, in A. D. 1855; consequently could not tell as to what had been put on it since or what had been done with it.

Ans. to cross-int. 5th. I bought said certificate for S. W. March in Austin and paid one thousand dollars in gold for it. I paid the cash for it at the time I bought it, in the year A. D. 1855. I paid it to Dennis Trammell. I obtained the transfer when I paid for it. It had not been located on the land in controversy before I bought it. It was in Austin, Texas. It was delivered at that time. I do not know.

358 Ans. to 6th cross-int. He was an educated man. He was a doctor by profession. He was about 30 years old. He was a very cautious trader. At that time he was worth about ten or fifteen thousand dollars. He was a successful business man. I think he was. He was. He was a man of great capacity for business. S. W. March never had the certificate in his possession, to my knowledge. I, A. M. March, Wm. Howeth, Capt. Twitly, and Col. Montague were the only parties that had the certificate in their possession from the time I bought it and located it till I returned it to the general land office at Austin, Texas.

Ans. to 7th cross-int. I never examined or ever saw it since I put it in the land office, in the year A. D. 1855.

Ans. to 8th cross-int. I bought said land certificate for S. W. March from Dennis Trammell in the year A. D. 1855. I bought it before the patent was issued for said land. It was a written sale. A league and labor land certificate was what I bought. I paid one thousand dollars in gold. I obtained for S. W. March a warranty title to the same. I cannot obtain the original writing. I don't know anything about the leases that were given on said land and cannot attach a copy of them to my answer. I don't know what quality of land

the leases were taken on. Said land lies in the Spanish Fort Bend, on Red River, in Montague county, Texas, bounded on the north by Red River; on the east by the Thomas Scott survey. I don't know how it is bounded on the other two sides. I don't know anything about the leases or what possession was taken thereunder, or for what years the leases were given. I also know nothing about the lessees or the land they occupy.

359 Ans. to cross-int. 9th. I do not know how much of said land has been occupied by S. W. March or those claiming under him, nor how much has remained unoccupied. I know nothing about Dugan's part of it as to occupancy. I do not know who has occupied the land nor at what time they occupied it nor their metes and bounds of their leases.

Ans. to cross-int. 10th. I don't know.

Ans. to cross-int. 11th. I do not know what the rental value of said land is.

Ans. to cross-int. 12th. I know nothing of the improvement or the number of acres inclosed. It is inclosed partly by wire and partly by rail fence—that is, a part of it is inclosed. I do not know as to the number of buildings nor the parties putting them there, nor can I state as to each person's improvements. The year they were put there nor the value of them or anything else do I know about the improvements except that a large portion of the land claimed by S. W. March is under fence and has other improvements on it.

Ans. to cross-int. 13th. It was in Austin; was in 1855; it was in Dennis Trammell's possession. I do not know how Dennis Trammell heard of it, nor I don't know how he got it, nor do I know how come him to sell it. I do not know where Dennis Trammell lived. I had no correspondence with Dennis Trammell about anything. I know nothing of Trammell's purchasing said certificate or how long he had it before I saw him. It was not by appointment or prior understanding that I met Dennis Trammell. I had the Phinise Roberson certificate in my possession about thirty days for location in 1855, and it was about the time of the dates herein mentioned, between May the 12th A. D. 1855, and June the 23rd, A. D.

360 1885; but I cannot state positively as to where the certificate was on May the 12th and June the 23rd, A. D. 1855.

Ans. to cross-int. 14th. I never saw J. P. Dumas. I don't know anything about his having a certificate nor his connection with it in any way, and he never told me anything about the certificate or transfer on it. I don't know where Dennis Trammell got the certificate nor from whom. I did not confer with him about it.

Ans. to cross-int. 15th. Between twelve and eighteen days, I think. If it had I did not know. If J. P. Dumas had the certificate I know nothing of it. I know nothing about his interest in the land nor anything about his connection with it whatever. If said certificate was ever located in Grayson county, Texas, I know nothing about it whatever.

Ans. to cross-int. 16th. I do not know what survey S. W. March did build on. I never heard S. W. March express any doubts as to his title to said land. I did not. I don't know anything about the

improvements put on said land. I never heard S. W. March express any doubt whatever in regard to his title to said land.

(Signed) A. M. MARCH.

STATE OF TEXAS,
County of Montague.

I, L. C. McNatt, a notary public in and for the county of Montague and State of Texas, do certify that the foregoing answers of the witness, A. M. March, were taken before me and were signed and sworn to by the said A. M. March before me. To certify which I hereto set my hand and seal of office, at office, in the town of Burlington aforesaid, this the 20th day of May, A. D. 1882.

(Signed) L. C. McNATT.
[SEAL.] *Notary Public for Montague Co., Texas.*

361 Direct interrogatories propounded by complainants to James L. Dallerhide and James Morris, who reside in the county of Little River, State of Arkansas.

Int. 1st. What is your age? In what State were you born, and in what, if any, other State have you lived?

Int. 2nd. State the name of your father. State whether he has ever lived in Texas; and, if so, when and in what county. State if he ever left said State, and, if so, when, and to what State and county he went and all the places that he lived at while you knew him, and when and where he died. State if he had any uniform way of spelling his name; and, if he had, state what it was, and state if ever you knew of his writing or spelling it otherwise; and, if yea, state how.

(The witnesses Dollerhide and Morris need not answer 2nd and 3rd interrogatories.)

Int. 3rd. What, if anything, do you know about his having ever had a claim to land or land certificates in the State of Texas? State what, if anything, you know about his claiming or not claiming such. If you know of his having sold his head-right certificate state what you know about that, who to, and where. If you ever heard him make statements about having sold or disposed of it state that.

Int. 4th. If you ever knew one Phineas Robinson and you were not his son or daughter, then state how, if at all, you were related to him; and, in response to this interrogatory, answer the above interrogatories No. 2 and No. 3 as if addressed to you in regard to said Phineas Robinson, and answer them fully in every particular.

362 Int. 5th. Did you know David Trammell and Dennis Trammell; and, if so, where and when? Did you know their character for honesty or reputations for veracity in the communities in which they lived? And, if you do, state what they were. If you know of any effort or attempt by them or either of them to

purchase from said Phineas Robinson his head-right certificate for a league and labor of land in Texas, you will please state all you know about when and where it was, what was said and done and who by, and what statements said Robertson made about it, and when.

Int. 6th. Did you know one J. H. Bradshaw; and, if so, when and where? Do you know his general reputation for truth and veracity in the communities in which he has lived? And, if you do, state whether it was good or bad, and state what it is now. State what his reputation was for honesty and integrity, if you knew.

Int. 7th. State if you were acquainted with the handwriting of the said Phineas Robinson, Dennis Trammell, David Trammell, and J. H. Bradshaw; and, if so, state how you became acquainted with the handwriting of each. You will please examine the paper purporting to be signed by Finis Robertson as the grantor and by J. H. Bradshaw and David Trammell as subscribing witnesses, transferring to Dennis Trammell the head-right certificate of said Robertson for a league and labor of land granted him by the Republic of Texas, No. 127, now exhibited to you, and say whether you recognize the handwriting of either the body or either of the signatures to the same; and, if so, specify which and say in whose handwriting; is the signature "Fines Robertson," in your opinion, genuine or not and your reason for your opinion. Is said signature the genuine signature of Phineas Robinson referred to in the preceding interrogatories, in your opinion? And state your reason for your opinion, if you have any opinion or knowledge on the subject, or as to whose
363 handwriting the said signature is, state it, with your reasons.

If you ever saw said paper before state where and under what circumstances, in whose possession was it, and for what purpose; what was then said or done. Identify the said paper to which you now refer in some way so that it may be known.

Int. 8th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answers.

A. M. CARTER AND
WELBORN, LEAKE & HENRY,
Solicitors for Complainants.

[Cross-int. on page 366 and answers on pages 370 & 377.]

364 *Cross-Interrogatories to Morris, Dallerhide, Starr, Arnold, Moore, Walker, Baker, and Allen, Witnesses for Plaintiffs.*

Cross-int. 1st. If you have stated that you are acquainted with the handwriting or signatures of Finess T. Roberson or Robertson, Oscar Engeldow, George Allen, and H. B. Dance, or either of them, please state the last time you saw either of them write anything or saw anything you knew was written by either of them. Where are each of said parties now?

SAWNIE ROBERTSON,
Def'd'ts' Solicitor.

Cross-Interrogatories to Robert Elgin and Alfred Grooms.

Cross-int. 1st. How do you know that there was any thing or paper attached or fastened to the Finess Roberson certificate when it came into the land office in 1855 or about that time? How do you know but that the paper referred to has not been attached to said certificate since that time? When was your attention first called to the paper on said certificate and who by? When were you last employed in the land office?

Cross-int. 2nd. What was the custom in the land office of Texas in 1855 and for a few years previous to and after said year as to where file-marks on certificates were placed? Were the file-marks ever placed on the envelope containing the certificate or on a piece of paper filed with, attached to, or inclosing it? If yea, please state about the proportion of times the file-marks were placed on the certificate itself and on the envelope or piece of paper attached to or accompanying it.

Cross-int. 3rd. When was the pretended transfer on the back of the Finesse Roberson certificate first discovered and who by? Who was said transfer to and why was it not sooner discovered by such person?

SAWNIE ROBERTSON,
Def'ts' Solic't'r.

(These cross-intgs. to Morris, Dallarhide, *et al.* were copied second time by mistake.) Pages 364 to 369, inclusive, do not belong here & are void.

365 *Cross-Interrogatories to J. P. Smith.*

Cross-int. 1st. Where do you live now and how long have you lived on such place? What is your occupation? Did you ever engage in any way in the land business? If yea, where at and who with? Were you ever engaged or interested in any land transaction with any person by the name of Cundiff? If yea, which one of the Cundiffs and what was the nature of the transaction?

Cross-int. 2nd. Where is the person whom you say told you about the pasting or placing of a piece of paper on the Finesse Roberson certificate now? Who was present when he told you what you have testified about in answer to Int. 4th? Where did he tell you this and when? How long had you known him at that time? Where did he live at that time and where did you live? How did plain-

tiffs find out that he told you this and when did they find it out? Did said person tell you this as a secret or publicly? If as a secret, how did you come to tell it? If publicly, give the name and residence of some one besides yourself who heard it.

Cross-int. 3rd. How long have you known the Cundiffs and what interest has each of them in this suit? Do you not know that the deed to James J. R. Cundiff was only made to give the Federal court jurisdiction of this case and thereby avoid a trial where they are known?

SAWNIE ROBERTSON,
Solicitor for Defendants.

366 *Cross-Interrogatories to James S. Dallerhide and James Morris, Residents of the State of Arkansas.*

Cross-int. 1st. Did you ever see one W. H. Cundiff, of Texas? If so, when, where, and how often have you seen him and what business was he in when he saw you?

Cross-int. 2nd. Do you know the general reputation of said Cundiff as a land dealer in Houston county, Texas, the field of his former labors, or in Wise county, Texas, his present abode?

X Int. 3rd. Did said Cundiff ever talk to you in reference to what your testimony would be in this suit? If so, when, where, and how often?

X Int. 4th. Who is present while your answers are being taken, when and where did you last see Mr. Cundiff, and where is he while your answers are being taken?

X Int. 5th. When, where, and how long did you know J. H. Bradshaw? Did he ever live in Sevier county; if so, how far and in what direction did he live from Paraclifta, the then county-seat? How far did said Bradshaw live from Phineas Robertson?

X Int. 6th. Is said Bradshaw related to you in any way; and, if so, how related?

X Int. 7th. Is it not true that you several years ago employed a lawyer named Donohue, of Clarksville, Texas, or some other
367 lawyer, to recover the Phineas Robertson head-right survey in Texas? If so, state what lawyer you employed and what you were to give him to recover the land.

X Int. 8th. Did the heirs of Phineas Robertson consult James L. Dollerhide before they employed a lawyer to hunt up, to sue for, and recover their father's head-right in Texas?

X Int. 9th. Give the full names and ages of all of Phineas Robertson's children. If his daughters were ever married state when, how often, and to whom.

X Int. 9th. Was not Phineas Robertson once constable in Sevier, Arkansas? If so, state when and how long he held that office.

X Int. 10th. Have you any letters, documents, or signatures in the handwriting of Phineas Robertson that you know to be genuine? If so, attach them to your answers and state how you know them to be genuine.

X Int. 11th. Mr. Dallerhide, is it not true that you have in your

possession a deed from Phineas Robertson as administrator, made a short while before his death? Please attach that deed to your answers or state fully why you cannot. Do you know that Phineas Robertson signed said deed; and, if so, how do you know that fact?

X Int. 12th. If you cannot attach that deed, make as near a facsimile of the signature as you can, and state just how the name of the grantor is spelt in the signature to the deed. Is it not spelt thus: Phiness Y. Robinson?

368 X Int. 13th. If you do not have said deed state what has become of it since last summer, when you had it at your residence in Rocky Comfort.

X Int. 14th. Mess. Dallerhide and Morris: Did you ever know H. G. Rind and David Faron? If so, state when and where, and how long you knew them, and if they are now dead state when they died.

X Int. 15th. Did H. G. Rind and David Faron ever hold office in Sevier county, Arkansas? If so, state when, and what offices they held.

X Int. 16th. During the year 1855 did H. G. Rinds and David Faron hold office in Sevier county? If so, state what office each of them held, and where was the county site of Sevier county at the time.

X Int. 17th. Were you acquainted with the general reputation of H. G. Rind and David Faron in Sevier county for honesty and fidelity in office? If so, state what the reputation was.

X Int. 18th. Were H. G. Rind and David Faron acquainted with Finess Y. Robertson, Dennis Trammell, J. H. Bradshaw, and David Trammell? If so, state your reasons for knowing that fact.

X Int. 19th. Was not Phiness Y. Robertson a constable in Sevier county while David Faron and H. G. Rind were holding office in the same county?

369 X Int. 20th. Are you not acquainted with the handwriting of H. G. Rind from a long and intimate acquaintance with him and from having often seen him write and from frequent examination of papers in his handwriting?

X Int. 21st. Please examine the two certificates signed by H. G. Rind on the deed from Finess Robertson to Dennis Trammell. Are they not in the handwriting of H. G. Rind? Please examine the seal to the certificate signed by H. G. Rind. Is it not the exact impression of the seal then in use in Sevier county and now on file in Locksburgh, the county-seat?

(Signed) DAVIS & SAWNIE ROBERTSON,
Solicitors for March et al.

[See note on page 364 on margin of trans.]

370 The deposition of James S. Dollarhide, taken on the 17th day of May, 1883, at the office of E. W. Dollarhide, in the county of Little River and State of Arkansas.

The said JAMES S. DOLLARHIDE, being first by me duly sworn, on his corporal oath states as follows:

Ans. to Int. 1st. I am sixty-four years of age and was born in the State of Kentucky; have lived in the States of Louisiana, Texas, and Arkansas.

Ans. to Int. 4th. I was well acquainted with one Phiness Y. Robinson. He was my brother-in-law—married my sister. In 1835 he, with his family, left Arkansas; he told me he was going to Texas. Some time after they left Arkansas I learned from him that they were living on the Brazos, in Texas. He afterwards told me that he lived at or near Nacogdoches, in Texas, a part of the time while he was in Texas; that he left there and went to the State of Louisiana, and, to the best of my recollection, in the year 1841 he moved back to Sevier county, State of Arkansas, where he resided until his death, which, I believe, occurred in the year 1863. He spelled his name Phiness Y. Robinson; I never knew him to spell it otherwise. After he returned to the State of Arkansas I several times heard him speak of having obtained a head-right certificate from the government of Texas for one league and one labor of land, which he had sold before leaving Texas to parties whose names I have forgotten; believe one of the parties' name was Robbins. I never heard him set up any claim to said land certificate after he returned to Arkansas.

Ans. to Int. 5th. I was acquainted with David Trammell and Dennis Trammell, first in the Territory of Arkansas, afterwards in the State of Arkansas. We lived in the same neighborhood when I first knew them. We afterwards all lived in Sevier county, Arkansas, several years. I was acquainted with Dennis Trammell, I suppose, thirty years. He was considered a shrewd, tricky, unreliable man in the community where he lived. David Tram-
371 mell was a man of but little shrewdness; considered dishonest in the community where I last knew him. I know of no effort or attempt by said David or Dennis Trammell or either of them to purchase from Phiness Y. Robinson his head-right certificate for one league and labor of land in Texas.

Ans. to Int. 6th. I was acquainted with one J. H. Bradshaw; I knew him in Sevier county, in the State of Arkansas. He was considered a kind-hearted man, vacillating in habits, easily influenced, honest, and tolerably truthful. I cannot state what his character is now for honesty and integrity. I have known nothing of him for several years.

Ans. to Int. 7th. I was acquainted with the handwriting of Phiness Y. Robinson, having often seen him write. I was not acquainted with the handwriting of David Trammell, Dennis Trammell, and J. H. Bradshaw. I have examined the paper purporting to be signed by Fines Robertson as grantor and J. H. Bradshaw and David Trammell as subscribing witnesses, transferring

to Dennis Trammell the head-right certificate of said Robertson for a league and labor of land granted him by the Republic of Texas, No. 127, now exhibited to me, on which I endorse my name, and do not recognize the handwriting of either the body or either — the signatures to the same. My opinion is the signature (" Fines Robertson ") is not the handwriting of Phiness Y. Robertson. The first time I ever saw said paper it was in the possession of the gentleman, whom I understood to be a lawyer, by the name of Davis, from Gainesville, Texas, and an attorney in the cause. I believe it was in the summer of 1882 that the said Davis showed me said paper, in the town of Rocky Comfort, in Little River county, Arkansas. I supposed he was looking up evidence to be used in the trial of this cause. He inquired about said Phiness Y. Robinson's heirs, J. H. Bradshaw, and others, and of myself in reference to the signature, Fines Robertson, on said paper.

372 Ans. to Int. 8th. Nothing farther suggests itself to me that would be a benefit to either of the parties in this suit.

JAMES S. DOLLARHIDE.

Ans. to cross-int. 1st. I have seen one W. H. Cundiff at this place three times. I believe the first time was in the year 1880, and the second the year 1882, and the last time in the year 1883. He was looking after Phiness Y. Robertson's children and other parties that had been acquainted with said Robinson in his lifetime.

Ans. to cross-int. 2nd. I know nothing of the reputation of said Cundiff as a land dealer in Houston county, Texas, or in Wise county, Texas.

Answer to cross-int. 3rd. The first time I met said Cundiff he inquired of me for the said Robinson's children and any other parties that had a long acquaintance with said Robinson, and inquired of me what I knew in reference to the matter in controversy in this suit. My recollection is that this conversation took place in the year 1880, in the town of Rocky Comfort, county of Little River, and State of Arkansas. We have had similar conversations every time I have met him. He never asked me what my testimony would be in this cause.

Ans. to cross-int. 4th. Lewis W. Dollarhide, the notary public, and myself are the only persons present while my answers are being taken. I last saw Mr. Cundiff on the evening of the 16th day of May, 1883, in the town of Rocky Comfort, county and State aforesaid. I cannot say where he is while my answers are being taken; suppose he is in said town of Rocky Comfort.

Answer to cross-int. 5th. My recollection is I first knew J. H. Bradshaw, in 1828, in the then Territory of Arkansas, after-

373 wards Sevier county, State of Arkansas. He lived a part of the time about 20 miles northwest of Paraclifta, the then county-seat, and a part of the time about 10 miles northwest of Paraclifta. I suppose he lived about 7 miles from Phiness Y. Robinson's when living at either place. He left Sevier county, I suppose, 20 years ago. I have known nothing of him since except from hearsay.

Ans. to cross-int. 6th. Said Bradshaw is not related to me in any way that I know of.

Int. 7. I never employed a lawyer named Donehue or any other lawyer of Texas to recover the Phicas Robertson or Phiness Y. Robinson head-right survey in Texas.

Ans. to cross-int. 8th. The heirs of Phineas Robertson never consulted me in regard to employing a lawyer to hunt up, sue for, and recover their father's head-right in Texas.

Ans. to cross-int. 9th. I do not recollect the full names and ages of all Phiness Y. Robinson's children; neither do I know when his daughters were married.

Ans. to 2nd 9th cross-int. Phiness Y. Robinson once acted as constable in Sevier county, Arkansas. I do not recollect when he acted as such or how long; neither do I know whether he held the office by election or appointment or was merely acting under a special deputation.

Ans. to cross-int. 10th. I, as the administrator of William Lee, deceased, have in my possession a deed in which Phiness Y. Robinson conveyed certain lands to said Lee. I know the signature to said deed to be genuine. I saw said Robinson sign his name to the same.

Ans. to cross-int. 11th. I have in my possession a deed from Phiness Y. Robinson to William Lee, dated 30th day of November,
1859. I cannot attach said deed to my answer, because it is
374 the evidence of title in William Lee, deceased, and only in my
possession as the administrator of the estate of said deceased. I know the signature of Phiness Y. Robinson to said deed to be genuine, because he signed and acknowledged said deed before me. I have not in my possession nor never had in my possession a deed from Phineas Robertson as administrator, made at any time; therefore cannot attach such a deed to my answer.

Phiness Y Robinson

Ans. to cross-int. 12th. The above is as near a fac-similie of the signature to the deed referred to in my answer to the 10th and 11th cross-int. as I can make. The name of the grantor to said deed is spelt Phiness Y. Robinson.

Ans. to cross-int. 13th. I have in my possession the same deed which I showed to a Mr. Davis, of Texas, last summer; it is the same deed referred to in my answers to the 10th and 11th cross-int. herein.

Ans. to cross-int. 14th. I was acquainted with H. G. Rind and David Foran. I suppose it has been 44 years since I became acquainted with H. G. Rind and about 52 years since I became acquainted with David Foran. I first became acquainted with Rind in the Indian nation and with Foran in the Territory of Arkansas, and knew them both for many years while they lived in Sevier county, State of Arkansas. They are both reported dead; I don't know when they died.

Ans. to cross-int. 15th. H. G. Rind and David Foran both held office in Sevier county, Arkansas.

Ans. to cross-int. 16th. H. G. Rind and David Foran held office in Sevier county during the year 1855. H. G. Rind was clerk of the circuit court and David Foran was county judge. Paraclifta was the county-*cite* of said county at that time.

375 Ans. to Cross-int 17th. I was acquainted with the general reputation of H. G. Rind and David Foran in Sevier county for honesty and fidelity in office. They both stood very high in the community in which they lived.

Ans. to cross-int. 18th. H. G. Rind and David Foran were acquainted with Phiness Y. Robinson and J. H. Bradshaw; I know that fact from seeing them frequently together. I cannot say whether they were acquainted with David Trammell or not; I suppose they were.

Ans. to cross-int. 19th. I suppose Phiness Y. Robinson acted as constable in Sevier county while David Foran and H. G. Rind were holding offices in the same county; I am not certain that he did.

Ans. to cross-int. 20th. I was acquainted with the handwriting of H. G. Rind.

Ans. to cross-int. 21st. I have examined the certificates on the deed from Finess Robertson to Dennis Trammell; they are in the handwriting of H. G. Rind. I have examined the seals to said certificate; they are so dim I am not certain they are the exact impression of the seal then in use in Sevier county.

JAMES S. DOLLARHIDE.

Sworn to and subscribed to before me this 17th day of May, 1883.

LEWIS W. DOLLARHIDE,

[SEAL.] *Notary Public for Little River County, Arkansas.*

STATE OF ARKANSAS, }
County of Little River. }

I, Louis W. Dollarhide, a duly commissioned and acting no-

376 tary public in and for the county of Little River and State of Arkansas, do certify that the foregoing deposition of James S. Dollarhide was taken before me and was read to and subscribed by him in my presence at the time and place and in the action mentioned in the caption, the said James S. Dollarhide having been first sworn by me that the evidence he should give in the action should be the truth, the whole truth, and nothing but the truth, and his statements reduced to writing by me in his presence, the said James S. Dollarhide and myself alone being present at the examination.

In witness whereof I have hereunto set my hand and affixed the seal of my office the day and date mentioned in the caption of said deposition.

LOUIS W. DOLLARHIDE,

[SEAL.] *Notary Public for Little River County, State of Arkansas.*

377 The deposition of James Morris, taken on the 12th day of May, 1883, at the office of E. W. Dollarhide, in the county of Little River and State of Arkansas, to be read as evidence on the part of plaintiffs, in an action between Ida Underwood *et al.*, plaintiffs, and H. J. Dugan *et al.*, defendants, pending in the circuit court of the United States for the 5th circuit and northern district of Texas, in the 5th circuit.

The said JAMES MORRIS, being first duly sworn, deposes and says as follows:

Ans. to Int. 1st. I am 53 years old. I was born in Miller county, in the Territory of Ark., and never had a home in any other State.

Ans. to Int. 4th. I was acquainted with Phiness Y. Robinson, Sen., in his lifetime. I was not related to him that I know of. I knew him in Sevier county, Arkansas. I was acquainted with him upwards of 20 years, and have often heard him speak of having lived in Texas and having trouble with the Indians on the frontier of Texas previous to his return to Arkansas; all the place he lived at while I knew him was on the Rolen Fork, Sevier county, Arkansas, where he died during the late war. I don't recollect the date. I have seen him write and have seen his signature. My recollection is he always spelled his name "Phiness Y. Robinson." I never knew of his writing or spelling it otherwise. I know nothing of his having or claiming *or having* sold his head-right certificate to land in the State of Texas.

Ans. to Int. 5th. I was slightly acquainted with Dennis Trammell and David Trammell in Sevier county, Arkansas, before the late war and with Dennis Trammell since the war. Dennis Trammell was considered a shrewd, tricky man; not considered reliable, and would not do to trust. I know nothing about said Robinson having a head-right certificate for a league and labor of land in Texas;
378 don't recollect ever hearing anything about it during his lifetime.

Ans. to Int. 6th. I was acquainted with one J. H. Bradshaw. He lived in Sevier county, Arkansas. He was considered a kind-hearted, clever man, and easily persuaded into anything; would drink whisky, play cards, run horse-races, and join the church nearly every camp-meeting; considered honest and tolerably truthful. I don't know what his character is now. I have not seen him in several years.

Ans. to Int. 7th. I was very well acquainted with Phiness Y. Robinson's handwriting from having business transactions with him. I was acquainted with J. H. Bradshaw's handwriting, having gone to school with him. I was not acquainted with the handwriting of David and Dennis Trammell. I have examined the paper purporting to be signed by Fines Robertson as grantor and J. H. Bradshaw and David Trammell as subscribing witnesses, transferring to Dennis Trammell the head-right certificate of said Robertson for a league and labor of land granted to him by the Republic of Texas, No. 127, now exhibited to me, on which I indorse my name. I do not recognize the handwriting of the body of said paper. I cannot say in whose handwriting the signature of "Fines Robertson" is in. I am

satisfied that it is not the handwriting of Phiness Y. Robinson. I never saw said paper until to-day.

Ans. to Int. 8th. The said Dennis Trammell, David Trammell, and J. H. Bradshaw were all brothers-in-law, having married sisters. I know nothing farther that would be of benefit to either party to this suit.

(Signed) JAMES MORRISS.

379 *Answers of the Witness, James Morriss, to the Cross-Interrogatories Propounded to Him.*

Ans. to cross-int. 1st. I have seen one W. H. Cundiff three times in the county of Little River, in the State of Arkansas. The first time was in Sep., 1880. I suppose he was looking up evidence to be used in this suit. He was inquiring particularly about Phiness Y. Robinson and parties that had been acquainted with said Robinson.

Ans. to cross-int. 2nd. I know nothing of the general reputation of said Cundiff as a land dealer in Houston county, Texas, or elsewhere. I know nothing about him except what I have seen here in Arkansas.

Ans. to cross-int. 3rd. Said Cundiff did not ask me what my testimony would be in this suit, but inquired of me what I knew of Phiness Y. Robinson—of his handwriting and signature. This conversation occurred the first time I ever saw him, in the year 1880. I have had one conversation with him in regard to the matters in controversy in this suit about 12 months since.

Ans. to cross-int. 4th. J. S. Dollarhide is present, a number of persons having been passing in and out, none of whom have asked me any questions. I saw Mr. Cundiff to-day in the town of Rocky Comfort, in the county of Little River, in the State of Arkansas. He has been present two or three times while my answers are being taken; has taken no part and asked me no questions.

Ans. to cross-int. 5th. I have been acquainted with J. H. Bradshaw about 20 years before the late civil war. We both lived in Sevier county, Arkansas, about 6 miles apart, until he mar-
380 ried. We then lived about 4 miles apart for several years, until his first wife died. He then married his second wife, and we lived about 12 miles apart. He lived in Sevier county, about 8 miles west of Paraclifta, the then county-seat, and a part of the time he lived about 20 miles northwest of Paraclifta. Said Bradshaw lived about 6 or 7 miles from Phiness Y. Robinson.

Ans. to cross-int. 6th. Said Bradshaw is not related in any way to me that I know of.

Ans. to cross-int. 7th. I never employed any lawyer to recover the Phineas Robertson head-right survey in Texas.

Ans. to cross-int. 8th. I know nothing about any lawyer being employed by the heirs of Phineas Robertson to sue for and recover their father's head-right in Texas.

Ans. to cross-int. 9th. I cannot answer the 9th cross-interrogatory.

Ans. to 2nd 9th cross-int. Phiness Y. Robinson once acted as

constable in Sevier county, Arkansas. I don't recollect when or how long he acted as such.

Ans. to cross-int. 10th. I have none.

Ans. to cross-int. 14th. I was well acquaintad with H. G. Rind and David Foran. I knew them in Sevier county, in the State of Arkansas, a great many years; I can't state how long. They are both reputed dead; don't know when they died.

Ans. to cross-int. 15th. H. G. Rind and David Foran both held the office of county and probate judge and of clerk in Sevier county, Arkansas.

381 Ans. to cross-int. 16th. My recollection is that H. G. Rind was clerk of Sevier county and David Foran was county and probate judge of said county during the year 1855. The county-*cite* was then at Paraclifta.

Ans. to cross-int. 17th. I was acquainted with the general reputation of H. G. Rind and David Foran. For honesty and fidelity in office their reputation was good.

Ans. to cross-int. 18th. H. G. Rind and David Forans were acquainted with Phiness Y. Robinson and J. H. Bradshaw. I know from having seen them frequently together, and I suppose they were acquainted with David and Dennis Trammell.

Ans. to cross-int. 19th. I don't know.

Ans. to cross-int. 20th. I was acquainted with the handwriting of H. G. Rind.

Ans. to cross-int. 21st. I have examined the two certificates signed by H. G. Hind on the deed from Fines Robertson to Dennis Trammell. They are in the handwriting of H. G. Rinds, I believe. I do not know that the seal to the certificates signed by H. G. Rind is the exact impression of the seal then used in Sevier county.

JAMES MORRIS.

Sworn to and subscribed before me this 12th day of May, 1883.

[SEAL.] L. W. DOLLARHIDE,
Notary Public.

382 STATE OF ARKANSAS, }
County of Little River. }

I, Louis W. Dollarhide, a duly commissioned and acting notary public in and for the county of Little River, in the State of Arkansas, do certify that the foregoing deposition of James Morris was taken before me and was read to and subscribed by him in my presence at the time and place and in the action mentioned in the caption, the said James Morris having been first sworn by me that the evidence he should give in the action should be the truth, the whole truth, and nothing but the truth, and his statements reduced by me in his presence. J. S. Dollarhide was present at the examination. Other persons were passing in and out of the office during the examination.

In witness whereof I have hereunto set my hand and seal of office the day and date mentioned in the caption of said deposition.

LOUIS W. DOLLARHIDE.

[SEAL.] *Notary Public for Little River County, Arkansas.*

383 Interrogatories to T. G. T. Steel, J. H. Derson, James Loch, M. W. Loch, Stephen Reddin, John G. McKean, S. B. Meillwee, and Mealinda White, residents of the county of Sevier, in the State of Arkansas, and witnesses for the defendants in the above numbered and exhibited suit.

1st. State your name, age, and place of residence.

2nd. If you reside in Sevier county, Arkansas, state how long you have lived there, and if you have ever held office in said county state what office you held.

3rd. Were you ever acquainted with J. H. Bradshaw? If so, state when, where, and how long you knew him, and state where he now resides.

4th. Did said J. H. Bradshaw ever reside in Sevier county, Arkansas? If so, state when and how long he resided there.

5th. Did you know the general character of J. H. Bradshaw in Sevier county, Arkansas, for truth and veracity when he lived there? If so, state what that character was, whether good or bad, and whether said character was such as to entitle him to belief when on oath.

6th. Did you know the general character of J. H. Bradshaw among his neighbors in Sevier county, Arkansas, for truth and veracity? If so, state what that character was, whether good or bad, and whether it was such as to entitle him to belief when under oath.

384 7th. Do you know the general character of J. H. Bradshaw for truth and veracity among the people of Sevier county who know him? If so, state what such character is whether good or bad, and whether it is such as to entitle him to belief when under oath.

8th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

(Signed) W. O. DAVIS AND
SAWNIE ROBERTSON,
Solicitors for Defendants.

385 Cross-interrogatories propounded by complainants to T. G. T. Steel, J. H. Denson, James Loch, M. W. Loch, Stephen Redden, John G. McKean, and S. B. Meillwee and Mealinda White, wittnesses for defendants.

X 1st. Each one of you will state your age, occupation, and place of residence.

X 2nd. How long since Bradshaw lived in Sevier county, Arkansas? What business did he follow when there? When did he leave that county? Where has he lived since? How do you know what his character was for veracity? Did you ever hear it discussed? And, if you did, state when and by whom.

(Signed) A. M. CARTER,
WELLBORNE, LEAKE & HENRY,
Attorneys for Plaintiffs.

386 Answers and depositions of T. G. T. Steel, James Locke, M. W. Locke, S. B. Mellwee, John G. McKean, Malaide White, residents of the county of Sevier, in the State of Arkansas, to the accompanying interrogatories propounded to them in the above numbered and entitled cause, taken before the undersigned, James S. Steele, a notary public within and for the county of Sevier, State of Arkansas, in accordance with the accompanying commission issued out of the United States circuit court for the northern district of Texas, at Dallas, Texas.

To the first direct interrogatory the witness, T. G. T. STEEL, answers: My name is Thomas G. T. Steel. I usually sign my name T. G. T. Steel. I am sixty-six years of age. I reside at Lockesburg, Sevier county, Arkansas.

Ans. to 2nd direct Int. I resided in Sevier county since the fall of 1856. I resided in Sevier county in 1845 and 1846. I have represented the county of Sevier in the State Legislature. I have been judge of the eighth (8th) judicial circuit of the State of Arkansas, in which the county of Sevier is included.

Ans. to 3rd direct Int. I am acquainted with J. H. Bradshaw. I became acquainted with him in 1846 in Sevier county, Arkansas; have known him ever since. My information is that he now resides at or near Stonewall station, on the M., K. & T. R. R., in the Indian country.

Answer to 4th direct interrogatory. J. H. Bradshaw resided in Sevier county, Arkansas, when I first became acquainted with him in 1846, and continued to reside in Sevier county, in said State, until a short time before the late war, say 1860. I am not certain as to the time he left this county. When he left this county he moved to the northern part of this State. My recollection is
387 he returned to this county during the late war. How long he then remained I do not recollect. When he left the next I learned of him he resided at or near Stonewall station, as before stated.

Answer to 5th direct Int. I knew the general character of J. H. Bradshaw during the time he resided in Sevier county, Arkansas, for truth and veracity. That character was good and was such as would entitle him to belief when on oath.

Answer to 6th direct Int. I knew the general character of J. H. Bradshaw during the time he resided in Sevier county, Arkansas, among his neighbors for truth and veracity. His character was good among his neighbors for truth and veracity, and was such as to entitle him to belief when under oath.

Answer to 7th direct Int. I knew the general character of J. H. Bradshaw for truth and veracity among the people of Sevier county, Arkansas. That character was good and would entitle him to belief when under oath.

Answer to 8th direct Int. I know nothing of any matter that would be of any benefit or advantage to the parties at issue except as stated.

Answers to Cross-Interrogatories Propounded by Complainants.

Ans. to 1st X Int. I am sixty-six years of age. I am a practicing lawyer, and reside at Lockesburg, Sevier county, Arkansas.

Ans. to 2nd X Int. It has been twenty years or upward
388 since J. H. Bradshaw left Sevier county the first time. I am not positive as to the time he left the second time. My recollection is it was during the war. I am not positive as to the time he left. I have nothing now to refresh my memory. J. H. Bradshaw when he resided in Sevier county, Arkansas, was a farmer; he followed no other business as I recollect of. J. H. Bradshaw left Sevier county, Arkansas, in 1860, or near that time. I am not positive as to the exact time he left. It was a short time before the late war, as I have before stated. I do not recollect the time he left the second time. It was during the late war or shortly afterwards. My information is that since he left this county he has resided in the northern part of this State and in the Indian country. My advantages and opportunities for knowing the character of J. H. Bradshaw for truth and veracity while he lived in Sevier county, Arkansas, were that my business frequently called me into the neighborhood where he lived—not only during the time I lived in the county, but before that time. My business also called me into different parts of Sevier county, Arkansas, during that time. J. H. Bradshaw was a member of the Methodist Church, and nearly if not all the time I knew him was a very warm professor of religion, attended protracted meetings at various places, and not only in his general neighborhood, but at various places I met him. My observation was that he had the confidence and respect of his neighbors and the people where he went as a good man and reliable. My opportunities were to know J. H. Bradshaw at other places than at church, and my observation was that he had the confidence and respect of the people generally where he was known. I cannot state that I ever heard the particular question of J. H. Bradshaw's character discussed separate from any other question, but I have heard it discussed generally, and concluded that Mr. Bradshaw was a good man and had the confidence of the people not only in his neighborhood, but wherever he was known.

T. G. T. STEEL.

Sworn to and subscribed to before me this 13th, 6th day of June, 1883.

JAMES S. STEEL, *N. P.*

389 To the first direct interrogatory the witness, JAMES LOCK, answers:

Ans. to 1st direct Int. My name is James F. Locke. I usually sign my name Jas. F. Locke. My age is fifty-seven years. I reside in Sevier county, Arkansas.

Ans. to 2nd direct Int. I resided in Sevier county, Arkansas, since 1844. I have held the office of county treasurer for this county

and also the office of public administrator, and now mayor of Lockesburg, this county.

Ans. to 3rd direct Int. I was acquainted with J. H. Bradshaw. My recollection is I became acquainted with J. H. Bradshaw in the fall of 1846 in Sevier county, Arkansas, and have known him since that time. I do not know. I correct this: Some two years ago J. H. Bradshaw informed me that he was living near Stonewall station, in the Indian country.

Ans. to 4th direct Int. J. H. Bradshaw resided in Sevier county, Arkansas, when I first became acquainted with him in 1846. He resided in Sevier county several years after I became acquainted with him, but I cannot tell when he left this county.

Ans. to 5th direct Int. I knew the general character of J. H. Bradshaw for truth and veracity during the time he lived in this county; that character was good and was such as to entitle him to belief when on oath.

Ans. to 6th. I knew the general character of J. H. Bradshaw for truth and veracity during the time he lived in this county among his neighbors as I would know the character of any good man living nine or ten miles from me; that was good and was such as would entitle him to belief when under oath.

Ans. to 7th Int. I knew the general charactea of J. H. Bradshaw for truth and veracity among the people of Sevier county, who knew him while he lived in this county; that character was good
390 and was such as to entitle him to belief when under oath.

Ans. to 8th direct Int. I know of no other matters that would be of benefit to the parties to this suit.

Answers to Cross-Interrogatories Propounded by Complainants.

Ans. to 1st X Int. My age is fifty-seven years. My occupation is a hotel-keeper in the town of Lockesburg, this county, Arkansas. I reside at same place.

Ans. to 2nd X Int. Not knowing when J. H. Bradshaw left this county, I cannot tell how long it has been since he left this county. J. H. Bradshaw was a farmer when he lived in this county. I cannot state when J. H. Bradshaw left this county. I do not know where J. H. Bradshaw has lived since he left tnis county, only about two years ago J. H. Bradshaw told me that he lived near Stonewall station, in the Indian country. My opportunities for knowing the character of J. H. Bradshaw for truth and veracity was that I never heard anything derogatory alleged against his character. He lived in a neighborhood of good people, and seemed to have the confidence and respect of those who knew him. I never heard that particular trait of his character discussed—that is, his veracity. It was never questioned, that I ever heard of.

JAS. F. LOCKE.

Sworn to and subscribed to before me this 13th day of June, 1883.

[SEAL.] JAMES S. STEEL.

391 To the 1st direct interrogatory witness, M. W. LOCKE, answers:

Ans. to 1st direct Int. My name is Matthew W. Locke; I usually sign my name M. W. Locke; I am 67 years of age; I reside in Lockesburg, Sevier county, Arkansas.

Ans. to 2nd direct Int. I have resided in Sevier county 40 years, lacking a few months. I have held the office "of justice of the peace" for several terms; "assessor" of this county for 6 years; "president of the board of supervisors" for Sevier county.

Ans. to 3rd direct Int. I was acquainted with J. H. Bradshaw. I became acquainted with him in about 1846, and from that time up to the time he left this county. I do not know where he now resides.

Ans. to 4th direct Int. J. H. Bradshaw resided in Sevier county, Arkansas, when I knew him. J. H. Bradshaw was living in Sevier county, Arkansas, when I came here in 1844 and resided in said county until he left the county, which was within a few years before the late war.

Ans. to 5th direct Int. I knew the general character of J. H. Bradshaw in Sevier county, Arkansas, when he lived there for truth and veracity; that character was good and was such — to entitle him to belief when under oath.

Ans. to 6th direct Int. I knew the general character of J. H. Bradshaw among his neighbors when he resided in Sevier county, Arkansas, for truth and veracity; that character was good and
392 was such as to entitle him to belief when under oath.

Ans. to 7th direct Int. I knew the general character of J. H. Bradshaw among the people of Sevier county who knew him for truth and veracity while he lived in said county; that character was good and was such as to entitle him to belief when under oath.

Ans. to 8th direct Int. I know of no other matter that would be of interest to the parties to this suit.

Answers to the Cross-Interrogatories Propounded by Complainants.

Ans. to 1st X Int. I am sixty-seven years of age; I am a farmer by occupation; I am now postmaster at Lockesburg, Arkansas, and devote my entire time to the business of that office; I reside at Lockesburg, Sevier county, Arkansas.

Ans. to 2nd X Int. I do not know how long J. H. Bradshaw lived in Sevier county nor how long since he left this county; my recollection is he left this county within a few years before the late war; if I am correct in this it has been some twenty years since he left this county. J. H. Bradshaw was a farmer when he lived in this county. I do not know where J. H. Bradshaw has lived since he left this county. The opportunities and advantages that I had for knowing the general character of J. H. Bradshaw while he lived in Sevier county was I was a candidate in said county in 1846 and became acquainted with nearly every man that lived in said county,

and heard him spoken of frequently by his neighbors and by those who knew him in the county and never heard aught said
393 against him. This acquaintance was kept up continuously until Bradshaw left this county and said character is good here to-day with those who knew him when he lived here. I cannot say that I ever heard the particular question of J. H. Bradshaw's character for truth and veracity discussed; there was never any controversy about it; it was conceded that he was a good man.

M. W. LOCKE.

Sworn to and subscribed to before me this 14th day of June, 1883.
[SEAL.] JAMES S. STEEL, *N. P.*

The witness, S. B. MILLWEE, in answer to the direct interrogatories propounded by defendants, answered to first direct interrogatory: My name is Samuel B. Millwee. I usually sign my name S. B. Millwee. My name is S. B. Millwee. I am sixty-eight years of age. I reside in Lockesburg, Sevier county, Arkansas.

Ans. to 2nd direct interrogatory. I have resided in Sevier county, Arkansas, forty-three years. I never held any office in this county.

Ans. to 3rd direct Int. I was acquainted with J. H. Bradshaw. I became acquainted with him about forty-three years ago in Sevier county, Arkansas. When J. H. Bradshaw left this county he moved into the northern part of this State. I have been at his house while he lived there. I heard him say he was going to move to the Indian Nation, but I do not know where he now resides.

Ans. to 4th direct Int. J. H. Bradshaw once resided in Sevier county, Arkansas. He was living in said county when I
394 came to this county in 1840, and remained in said county until in 1859 or 1860, when he left said county for a time. I do not know how long he lived in said county this time. It was about 1864, I think, when he left.

Ans. to 5th direct Int. I knew the general character of J. H. Bradshaw in Sevier county, Arkansas, for truth and veracity when he lived here in this county. That character was good and was such as to entitle him to belief when under oath.

Ans. to 6th direct Int. I knew the general character of J. H. Bradshaw among his neighbors in Sevier county, Arkansas, for truth and veracity when he lived in said county. That character was good and was such as to entitle him to belief when under oath.

Ans. to 7th direct Int. I knew the general character of J. H. Bradshaw for truth and veracity among the people of Sevier county who knew him when he lived in said county. That character was good and was such as to entitle him to belief when on oath.

Ans. to 8th direct Int. I know of no other matter that would be of benefit to the parties to this suit.

Answers to Cross-Interrogatories Propounded by Complainants.

Ans. to 1st X Int. I am sixty-eight years of age. I am a farmer by profession. I reside in Lockesburg, Sevier county, Arkansas.

Ans. to 2nd X Int. It has been about twenty years since J. H. Bradshaw lived in Sevier county, or less time. I cannot be positive
395 as to the time he left this county. J. H. Bradshaw is a farmer by occupation when he resided in Sevier county, Arkansas. It is my recollection that J. H. Bradshaw left this county in 1859 or 1860 and stayed away for a few years. Then he returned and lived until about 1864, when he left again, and has not lived in said county since when he left Sevier county, Arkansas. He moved to the northern part of this State, and my recollection is that J. H. Bradshaw told me a few years ago that he was living in the Indian Nation. My opportunities for knowing the general reputation and character of J. H. Bradshaw when he lived in this, Sevier, county, Arkansas, was that I knew him from a boy; lived in his neighborhood and was intimately acquainted with all his neighbors. He was regarded as a model young man in that county and moved in the best society. He married twice in this county. Both times he married in the best families in this county. I cannot say that I ever heard any one discussing his character for truth and veracity while he lived here. This was never questioned by any one while he lived here or since he has left, as I ever heard of.

his
S. B. x MILLWEE.
mark.

Attest: JAMES S. STEEL.

Sworn to and subscribed to before me this 14th day of June, 1883.
JAMES S. STEEL, *N. P.*

Answers to the Interrogatories of Defendants by the Witness, John G. McKean.

Ans. to 1st direct Int. My name is John G. McKean. I am forty-six years of age. Chapel Hill, Sevier county, Arkansas, is my residence.

396 Ans. to 2nd direct Int. I have lived in Sevier county, Arkansas, forty-six years. I have never held any office in the county.

Ans. to 3rd direct Int. I was and am still acquainted with J. H. Bradshaw. I became acquainted with him in about 1842, in Sevier county, Arkansas. I personally knew him from about 1842, the days of my boyhood, up to about 1860. I have no personal knowledge of where Mr. Bradshaw now resides, but from information I learn he resides at or near Stonewall station, in the Chickasaw Nation.

Ans. to 4th direct Int. J. H. Bradshaw once resided in Sevier county, Arkansas. He resided in said county, Arkansas, from my earliest recollection up to about 1860, a period of about 20 years.

Ans. to 5th direct interrogatory. I knew the general character of J. H. Bradshaw in Sevier county, Arkansas, when he lived there for truth and veracity. That character was good, and was such as to entitle him to belief when on oath.

Ans. to 6th direct Int. I knew the general character of J. H. Bradshaw among his neighbors when he resided in Sevier county, Arkansas, for truth and veracity. That character was good, and was such as to entitle him to belief when under oath.

Ans. to 7th direct Int. I knew the general character of J. H. Bradshaw among the people of Sevier county, Arkansas, who knew him when he resided in said county and State for truth and ve-
397 racity. That character was good, and was such as to entitle him to belief when under oath.

Ans. to 8th direct Int. I know of no matter of interest to the parties *of* this suit, except as above stated, that I am informed.

Answers to Cross-Interrogatories Propounded by Complainants.

Ans. to 1st X Int. I am forty-six years of age. I am a farmer and planter by occupation. I reside at Chapel Hill, Sevier county, Arkansas.

Ans. to 2nd X Int. My recollection is J. H. Bradshaw left this county in 1860. That being true, he has been absent about twenty-three years. I have some recollection that he returned to Sevier county, Arkansas, during the late war, but when he left this time I cannot state. J. H. Bradshaw while he resided in Sevier county, Arkansas, was a farmer by occupation. As I have already stated, J. H. Bradshaw left Sevier county in about 1860, and am informed returned to said county during the late war. When he left this time I cannot state. When J. H. Bradshaw left Sevier county first time, as stated, he went to the northern part of this State, near Fort Smith, Arkansas. My information is he returned during the war, but I have no personal knowledge of this, as I was in the army. Where he has since resided I do not know other than from information that he now and has for several years past resided at or near Stonewall station, in the Chickasaw Nation. The advantages I have had for knowing the general character of J. H. Bradshaw for truth and veracity while he lived in Sevier county, Arkansas, was I knew J. H. Bradshaw when I was a boy. I was raised up in the same neighborhood with him. He dealt with my brother, who was a
398 merchant, and with whom I was doing business, and have heard him speak of Mr. Bradshaw as being reliable and an honest man. Whatever he promised to do he always performed to the best of his ability, and he moved in the best society of our county, and in society that admitted of none but good and reliable people. I have no recollection of ever hearing the particular question of J. H. Bradshaw's character for truth and veracity discussed, because it was never questioned. It was conceded, and could not be truthfully questioned.

JOHN G. McKEAN.

Sworn to and subscribed to before me this 15th day of June, 1883.

[SEAL.] JAMES S. STEEL, *N. P.*

Answers to the Direct Interrogatories Propounded by Defendants to the Witness, Malinda White.

Ans. to 1st direct Int. My name is Malinda White; I am sixty-six years of age; I reside in Sevier county, Arkansas.

Ans. to 2nd direct Int. I have lived in Sevier county, Arkansas, since 1826.

Ans. to 3rd direct Int. I was acquainted with J. H. Bradshaw. I have known J. H. Bradshaw from his infancy. I knew him in Sevier county, Arkansas. I knew J. H. Bradshaw upwards of 30 years before he left Sevier county, Arkansas. I do not know where Mr. Bradshaw now resides.

Ans. to 4th direct Int. Mr. Bradshaw resided in Sevier county, Arkansas, during the time I knew him, as stated above.

399 J. H. Bradshaw was born in Sevier county, Arkansas, and lived in said county until about the year 1860, being upwards of thirty years.

Ans. to 5th direct Int. I knew the general character of J. H. Bradshaw in Sevier county, Arkansas, when he lived here for truth and veracity. That character was good, and was such as to entitle him to belief when under oath.

Ans. to 6th direct Int. I knew the general character of J. H. Bradshaw among his neighbors while he lived — Sevier county, Arkansas, for truth and veracity. That character was good, and was such as to entitle him to belief when on oath.

Ans. to 7th direct Int. I knew the general character of J. H. Bradshaw among the people of Sevier county, Arkansas, who knew him while he resided in said county for truth and veracity. That character was good, and was such as to entitle him to belief when on oath.

Ans. to 8th direct Int. I know of no other matters that would be of interest to the parties to this suit, as I am informed.

Ans. to the Cross-Interrogatories Propounded by Complainants to the Witness, Malinda White.

Ans. to 1st X Int. I am sixty-six years of age. I am a widow lady and am running a farm. I reside in Sevier county, Arkansas.

Ans. to 2nd X Int. J. H. Bradshaw left Sevier county, Ar-

400 kansas, in or about 1860 and returned to said county in 1863 and remained in said county until after the war, say in 1865 or 1866, when he left this county and moved to the northern part of this State. It has been sixteen or eighteen years since J. H. Bradshaw resided in Sevier county. J. H. Bradshaw moved from this county to the northern part of this State (in Sebastian county) and lived there several years, but do not know where he has resided since he left that county. The advantages I had of knowing the general character of J. H. Bradshaw for truth and veracity while he lived in Sevier county, Arkansas, were I partly raised J. H. Bradshaw. A part of the time I knew J. H. Bradshaw my husband was sheriff

of Sevier county, Arkansas. He was sheriff of said county for sixteen years. During all of said time many persons visited our house. Mr. J. H. Bradshaw was a young man of considerable promise during his stay in this county—in our then new country. He was frequently spoken of by people at our house as a promising young man—as being honest and upright. After he grew up he became a member of the church, and remained a very consistent member of the church. I do not recollect of ever hearing the particular question of his truthfulness discussed; it was never questioned. His company was among the best society in the country.

her
[SEAL.] MALINDA x WHITE.
mark.

Attest: JAMES S. STEEL.

Sworn to and subscribed to before me as such notary public this 16th day of June, 1883.

JAMES S. STEEL, *N. P.*

STATE OF ARKANSAS, }
County of Sevier. }

I, James S. Steel, a notary public within and for the county of Sevier and State of Arkansas, duly commissioned and acting
401 as such, do certify that the foregoing answers of T. G. T. Steel, James Locke, M. W. Locke, S. B. Millwee, John G. McKean, and Malinda White, the witnesses above named, were made before me and were sworn to and subscribed before me by each of the said witnesses.

Given under my hand and seal of office, at office, in Lockesburg, Sevier county, Arkansas, this 18th ——, 1883.

[SEAL.] JAMES S. STEEL,
Notary Public for Sevier County, Arkansas.

402 *Interrogatories Propounded to S. W. March, the Witness for the Def't.*

Int. 1st. State your name, age, and residence.

Int. 2nd. State if or not you are acquainted with the parties to this suit.

Int. 3rd. State if you are or not the owner of the Finesse Robertson league and labor of land situated in Montague county, Texas.

4th Int. If, in answer to Int. 3rd, you state that you own said land, say by what means you became owner of the same.

Int. 5th. If, in answer to Int. 4th, you say that you located or had the same located by virtue of land certificate, state the No. of said certificate, how you obtained said certificate, when you obtained or purchased it, and under what character of circumstances.

Int. 6th. Did you or not ever see said certificate before its location or afterwards? If yea, state when and how many times you saw said certificate.

Int. 7th. If, in answer to Int. 6th, you state the time you first saw

said certificate, state its condition at that time, and whether or not it had anything pasted on back of same.

Int. 8th. If, in answer to Int. 7th, you say the first time
403 you saw said certificate there was not anything pasted on the back of the same, state whether or not you saw said certificate afterwards, and its condition and character at that time.

Int. 9th. If, in answer to Int. 8th, you state that the condition, appearance, or character of the said certificate was changed from what it was the first time you saw —, state in what manner and all you may know about it.

Int. 10th. If, in answer to any of the preceding interrogatories, you state that said certificate had been altered or changed, state whether or not you changed or altered the same or whether or not you ever authorized any one to alter or change the same.

Int. 11th. State all that you may know that would be of advantage to the defendant, S. W. March, in this cause.

QUIGLEY & SHOEMAKER,
Att'ys for S. W. March.

404 *Cross-Interrogatories (S. W. March).*

X 1st. If, in answers to direct interrogatories, you state that you are the owner of the Finesse Robertson league and labor survey in this county, please state from whom you purchased the same, where you purchased it, whether you purchased it in person or by agent, what consideration you paid for said land or certificate, and whether or not said consideration was ever paid by you and received by the person from whom you purchased said land or certificate.

X 2nd. State whether or not the person from whom you purchased was a *bona fide* purchaser for a valuable consideration from the said Finesse Robertson, and your means of knowing that fact, if you know it.

X 3rd. Was you personally acquainted with the said Finesse Robertson or with his handwriting? Do you know of his ever signing his name in different ways? And, if so, state in what particulars he differed in making his signatures.

X 4th. State whether or not at the time you purchased said land certificate you had any notice, actual or otherwise, of any defect in or adverse claimants to said land certificate.

X 5th. State the name of said certificate, its number, where and by whom issued, and how the name of the certificate was spelled.

X 6th. State when you first seen said land certificate, where you seen it, and what persons were present, and who gave it to
405 you to examine, and please state how the name of the said Finesse Robertson was spelled in the certificate.

X 7th Int. State whether or not you ever saw said certificate before it was patented on said land.

X Int. 8th. State what kind and color of paper said certificate was written or printed upon. Was said paper in a good state of preservation or was it worn, soiled, or torn? And, if so, describe its condition.

X Int. 9th. If you state there was a paper pasted on its back, please state what kind of paper it was, what color it was, and whether it was worn, soiled, or torn when you first examined it.

X Int. 10th. State whether said certificate was written or printed; whether it had any seal or seals upon it. If so, of what kinds? Do you know the certificate you lately saw to have been the identical certificate you first examined? When did you first have your attention called to the fact of there being paper pasted on the back of said certificate? And do you know whether or not there now is or ever was any transfer written on said certificate or anything attached thereto forming a part of said instrument?

X Int. 11th. State all that you may know that would be of any advantage to plaintiffs as fully and particularly as if thereto specially interrogated.

STEPHENS & MATTOCK.

406 *Answers and Depositions of S. W. March, who Resides in Rusk County, Texas.*

To the 1st Int. he answers and says: My name is Squire Welborne March; my age is near 51 years; I will be 51 years old on the 15th day of next September; my residence is at Mt. Enterprise, in Rusk county, Texas.

To 2nd Int. witness answers: I am only acquainted with S. W. March.

To 3rd Int. witness answers: I am.

To 4th Int. witness answers: I become to be the owner of said league and labor by purchase of the certificate and location and patent to me, the assignee of Finesse Robertson.

To 5th Int. witness answers: The number of the Finesse Robertson league and labor land certificate by which I located said league and labor of land is 127. I obtained it by purchase and payment of the purchase-money in the year 1855, as D. Trammell's transfer to me will exhibit, cash down when the certificate was delivered to my agent. It was bought and paid for and located by my agent to do so. The character of the circumstances that I bought and located said certificate are that I, prior to its purchase, did locate unknowingly a fraudulent league and labor certificate upon the same ground now patented to me by virtue of the said Finesse Robertson certificate and presented the field-notes and fraudulent claim to the general land office at Austin, Texas, for patent, and I was informed by the commissioner of said office that the certificate was fraudulent. I immediately sent A. M. March to Austin, Texas, to buy a good certificate, with instructions to cause Stephen Crosby, the com-
407 missioner of the general land office, to examine the certificate and the chain of transfers before purchasing and to buy only such as was good and would patent to me as the assignee, and the said commissioner did examine and pronounce the said certificate and the transfers all good and valid and in regular form and legal order to patent the same to me as the assignee of Finesse Robertson, and A. M. March thereupon did buy, pay for, and move forth to

apply the said Finesse Robertson certificate, by the assistance of the surveyor, to the location of the land that is patented to me as the assignee of said Finesse Robertson.

To 6th Int. witness Ans.: I did not see it before its location and patent. I saw it on two days or times after its location. The first time I saw it was in the year 1856 or 1857; the second time I saw it was in the year 1874.

To 7th Int. witness answers: The first time I saw said certificate it had no paper pasted on its back, except a yellow paper which bore the file-marks of the land office and was only attached at the top of said certificate. It appears to have been done by the commissioner or clerk filing the same in the land office.

To 8th Int. witness answers: The second time I saw said certificate it had the same yellow file paper tightly and nicely pasted all over its back, and through said paper a vestige of writing can be discovered by holding it up to strong light.

To 9th Int. witness answers: The condition and character and appearance of said certificate were changed after the manner described in my answer to 7th and 8th interrogatories.

408 To 10th Int. witness answers: I did not either alter or change the said certificate nor authorize or request any person to alter or change the same either by writing upon it or pasting paper over it or in any otherwise.

To 11th Int. witness answered: The first time I saw said certificate there was not any writing upon its back. I examined all the said certificates for the purpose of having my patent corrected, and I know that there was not any transfer or writing upon it, and I saw Stephen Crosby examine it and saw no writing on the back of said certificate or the attached yellow paper save the file-marks on the yellow paper. The yellow paper above referred to was only attached slightly at the top of the certificates the first time I saw it. The second time I saw it it was closely attached all over the back of the certificate, and very clearly shows that it was not attached by accident, but by means of paste or mucilage.

409 (S. W. MARCH.)

To 1st cross-int. witness answers: I purchased the certificate from Dennis Trammell June 23rd, 1855, at Austin, Texas, by my agent. I paid the consideration expressed in Dennis Trammell's transfer to me on file in the land office at Austin. I do not recollect the precise amount. I think 10 or 12 hundred dollars it was.

To 2nd cross-int. witness answers: His transfer from F. Robertson to himself shows he was.

To 3rd cross-int. witness answers: I was not.

To 4th cross-int. witness answers: I did not.

To 5th cross-int. witness answers: Finesse Robertson; 127; at Crockett; the board of land commissioners of Houston county, Texas. The name of the certificate is spelled certificate.

To 6th cross-int. witness answers: In the general land office at Austin about the year 1856 or 1857. I think Robert M. Elgin and

some other clerk. I do not now recollect; his name is spelled Finesse Robertson and was spelled so then.

To 7th cross-int. witness answers: I did not.

To 8th cross-int. witness answers: It was on white paper. I believe it was in a good state of preservation.

410 To 9th cross-int. witness answers: It was a yellowish paper, probably such as the land office use. I only saw it once, and that was the last time I saw the certificate. It appeared sound, but probably was worn some.

To 10th cross-int. witness answers: I think it was made by printing and writing. I am impressed that it was sealed. I do not now recollect the kind of seal. I do know it to be the same certificate. I believe in the year 1871 or 1872, at Montague. Mr. William T. Wayborne informed me that one Cundiff so described the certificate to him. I do not know that there is a transfer or writing on said certificate or that there was a writing or transfer on it or on anything attached to it or on anything constituting a part of it. Yet through the envelope pasted to its back slight vestiges of apparent writing is discoverable, or was when I saw it, which must be on the back of the certificate, or inside of the pasted yellow paper attached to it.

To 11th cross-int. witness answers: To dismiss this suit and to serve God and to keep his bowels open.

S. W. MARCH.

411 *Interrogatories Propounded to William Howith and W. C. Twitly, Who Reside in Cooke County, Texas.*

Interrogatories.

Int. 1st. What is your name, age, place of residence, and where have you resided since 1855?

Int. 2nd. Were you ever acquainted with S. W. March; if yea, when and where did you know him?

Int. 3rd. Do you know whether William Howeth and W. C. Twitly or either of them ever located or were interested in locating any land certificates for S. W. March; if yea, what certificates were so located by them for him?

Int. 4th. Do you know whether or not Wm. Howeth and W. C. Twitly or either of them had anything to do with locating the Finesse Robinson certificate in Montague county, Texas, which is in controversy in this suit; if yea, what did they have to do with locating it? Under what contract did they locate it; for whom did they locate it, and when? Were they at any expense or spend any time in locating it; if yea, how much of each? Tell everything that was done by said Howeth and Twitly or either of them about locating and procuring patent on the Finesse Robinson certificate referred to and the contract and circumstances under which this was done.

Int. 5th. When said Howeth and Twitly did the things and expended the money testified about in answer to the 4th Int. above,

412 from whom did they receive said Finesse Robinson certificate, who had possession of said certificate, and did such person or not claim to be the owner thereof, and did he or not explain how he was the owner and show his title papers or not? Tell all that such person said and did about explaining his title to said certificate. Did said Howeth and Twitly or not believe that said person was the owner of said certificate when they did the thing, and encourage the expenses testified about in answer to Intg. 4; if yea, what made them believe it? Did they or not know that there was any question about his title?

Int. 6th. Did S. W. March ever convey to William Howeth and W. C. Twitly any part of the land located by virtue of the Finesse Robinson certificate in Montague county, Texas; if yea, what part of it, when was the deed made, what was the consideration of the said conveyance? State fully and how the consideration was paid or performed, if at all.

Int. 7th. Did Wm. Howeth and W. C. Twitly ever convey any part of the land located by virtue of the Finesse Robinson certificate referred to above to G. C. Dugan; if yea, what part of it? When was the conveyance made, and what was the consideration of this conveyance, and when and how was this consideration paid, if ever? State fully and particularly.

Int. 8th. When G. C. Dugan purchased the land referred to in answer to Intg. 7th above, did he or not believe that he was getting a good title thereto? Did he know of any defect in the title he was getting, and, especially, did he or not know of any conveyance made by Finesse Robinson prior to the one under which his vendors claimed?

413 Int. 9th. When did you first hear of a conveyance by Finesse Robinson of the certificate by virtue of which the land in controversy was located prior in time to the one under which S. W. March claimed as above?

Int. 10th. State any other facts you may know that will be of benefit to any of the parties in this case as fully as if specially interrogated in reference thereto.

(Signed) DAVIS, EBLIN & ROBINSON AND HARE & HEAD, *Att'ys.*

414 *Cross-Interrogatories Propounded by Complainants to William Howith and W. C. Twitly, of Cooke County, Texas.*

Cross-int. 1st. What is your age and where do you reside? Are you a party to or in any way interested in this suit or are you related to any one who is? And, if so, explain how and in what degree.

Cross-int. 2nd. State when and under what circumstances you first saw the Finess Robertson land certificate and in whose possession it then was and what was being then done with it.

Cross-int. 3rd. Do you say positively and mean to be understood that at the date of your first seeing said land certificate there was no transfer of said certificate endorsed thereon and that there was

no paper or other substance attached thereto or fastened on it as to obscure and cancel a transfer written or endorsed thereon? Do you say that at the time said certificate was returned to the land office of Texas with the field-notes of the land in controversy in this suit there was not a transfer of said certificate to Warren L. Underwood endorsed thereon? Do you say or mean to be understood that at the date of its being so returned to said land office there was not a piece of paper or some other substance so attached or fastened to said certificate as to conceal endorsements thereon?

Cross-int. 4th. Have you seen said certificate since it was filed in the land office; and, if so, how many times, when, where, and in whose presence? And state whether at any time when you saw it it had any indorsement on it or paper pasted over it; and, if either, state what it was, and state if the same was placed there after
415 you first saw it; and if you state there was such indorsement or paper placed thereon, state if you know when it was done, who by, and for what purpose.

Cross-int. 5th. If you say that S. W. March acquired said certificate state what price he paid for it, how and when he paid it, and who to, and whether at the time of purchasing and paying for it he obtained his deed or transfer thereto, and whether the same had not been located on the land in contest before he so purchased it. Where was the certificate when he purchased; was it delivered then or afterwards? And state the fair market value of the land on which it is now located.

Cross-int. 6th. State whether said S. W. March was an illiterate or an educated man. If he had a profession state what it was. If you state he purchased said land certificate or that it was purchased for him, state his age at the time; state whether he was a cautious trader; state whether he was a man of property and a successful business man. Was he not a man of much above ordinary intelligence? Was he not a man of great mental cultivation and a man of great capacity for business? Did said S. W. March ever have said certificate in his possession after he purchased it; and, if so, how often and for how long? If he did not have it in his possession after its purchase by or for him state who did. State every person in whose possession it was after its purchase by or for said March until it was returned to the land office, as far as you are able.

Cross-int. 7th. If you speak of examining said certificate at any time, state in whose presence you made such examination and its result or what you ascertained.

416 Cross-int. 8th. If you in reply to direct interrogatories make any statement about any sale or transfer of said land certificate or of the land or any part of the land located by it and now in controversy, you will state the date of such sale or transfer, and whether it was before or after the issuance of a patent for said land. State whether such sale was written or verbal. State what was sold and what consideration was paid therefor. State whether a warranty or quitclaim title was made, and, if in your power to do so, attach a part of your answer to the original writing, if there was such,

and, if you speak of any leases made by any one of said land or part of the same, state if such lease or leases were in writing, and attach them or true copies thereof to your answer, if you can, and if you do not so attach any one of such leases, then state what quality of land each lease was for, where such land lies, how is it bounded, and for what length of time such lease is given, and how and what possession was taken or held thereunder, if any, and by whom, and for what years, stating at the same time your means of knowledge. Did the lessees or any of them live on the land in controversy or on an adjoining survey? State this as to each tenant.

Cross-int. 9th. Is it not a fact that only a small portion of said land has ever been actually occupied by said S. W. March or by any one claiming the same under or through him, and that the larger portion thereof has remained unoccupied since it was located by said certificate, and is it not a fact that the portion thereof claimed by the denizen of G. C. Dugan has never been occupied at all by any one? And if you say any portion of said land has been occupied by said S. W. March or G. C. Dugan or any one for or under them or either of them, then state who by, and when, and the metes and bounds held by each, and state your means of knowing
417 whether it was under a written or verbal lease authority.

Cross-int. 10th. What is the present market value of said league of land?

Cross-int. 11th. What is the annual rental value of so much of said league of land as has been actually occupied and inclosed?

Cross-int. 12th. Give a full statement of all improvements of a permanent nature put on said land within your knowledge, including the number of acres inclosed, and stating how inclosed, and the buildings or other improvements placed thereon, stating separately in every case the name of the person putting or having placed thereon such improvements, the character of each person's improvements, the year when each was put there, and the present value of the same.

Cross-int. 13th. Where was the Finesse Robertson certificate when you first heard of it or where you first saw it? When was it—what year? In whose possession was it, and how did Dennis Trammell come to learn of it, buy it, and sell it to S. W. March, and where did Dennis Trammell live at that time, and had you and he had any correspondence prior to said purchase in regard to it, and how soon after Trammell claimed to have purchased said certificate was it you saw him, and how did it happen or occur that you met him? Was it not by appointment and through a prior understanding? Where was the said land certificate on the following days and times, to wit, May 12th, A. D. 1855, June 23rd, 1855.

418 Cross-int. 14th. Did you ever — the said certificate in the possession of J. P. Dumas, and did you ever hear him say he had it, or are you in any way informed that he did have it, and, if you saw — in J. P. Dumas' possession or within his control, when was this? What had he to do with it? What did he tell you about the certificate, if anything, or about the transfer on the back of same? When and where did Denniss Trammell first get said cer-

tificate, and for what did you first confer with said Dennis Trammell or he with you about it?

Cross-int. 15th. How long after the certificate was located on the land in contest before the same was returned to the general land office? Is it not true that this Finess Robinson certificate had been located in Grayson county, Texas, prior to its being located on the land in contest, and did not J. P. Dumas have it for location in Grayson county, Texas, and did he not claim or have an interest in the land in Grayson county, Texas, on which said certificate was so located, immediately after the said certificate was removed from the Grayson county location, and when and why was the said certificate so removed from the Grayson county location? When was it located first in Grayson — and who for?

Cross-int. 16th. Do you not know that S. W. March builded a residence or dwelling-house near the land in contest on the Scott survey, and on a less eligible spot than he could have found on the Finess Robinson survey, and that he, S. W. March, refused to build on the land in contest, and because he was not satisfied with his title to same? Did you not hear him make a statement to that effect? Were not the houses, fencing, and other improvements put on the land previous to the death of said S. W. March of a very
419 cheap and inferior character, and do you not know or have you not heard him say, the substance, that his reason for not having better improvements put on the land was that his title to the land — unsatisfactory or disputed?

A. M. CARTER AND
WELBORNE, LEAKE & HENRY,
Solicitors for Plaintiffs.

420 Answers and depositions of William Howeth, a resident of the city of Gainesville, in Cooke county and State of Texas, to the accompanying interrogatories propounded to him.

Answers of the Witness, William Howeth.

To the first Int. he Ans.: My name is William Howeth; my age, 64 years; my place of residence, Gainesville, in Cooke county, Texas. I have resided in the State of Texas since the year 1839 except two years in California.

To the 2nd Int. he Ans.: I was acquainted with S. W. March. I became acquainted with him in 1845 or 1846 in Rusk county Texas, and knew him from that time until his death, which occurred about two years ago.

To the 3rd Int. he Ans.: I do. The certificates located by Wm. Howeth and W. C. Twitly were the Thomas Scott 1,535 acres, Alexander Coates 1,280 acres, Thomas Berryhill 640 acres, and Joseph S. Cochran one league and labor, the latter of which, namely, the Joseph S. Cochran certificate, having proven to be fraudulent, was afterwards substituted by the Finesse Robinson league and labor certificate.

To the 4th Int. he Ans.: I do. William Howeth and W. C.

Twitly did locate the Finesse Robinson certificate in Montague county, Texas, which is in controversy in this suit. They applied said Finesse Robinson certificate in the place of the said Joseph S. Cochran certificate under a contract with A. M. March, dated July 28th, 1855, the acting agent for his brother, S. W. March. The Finesse Robinson certificate was located about the 28th of July, 1855, but appears to have been located in January, 1855,
421 from the surveyor's records. Howeth and Twitly were at some expense and spent some time in locating the Finesse Robinson and other certificates herein mentioned, which was about as follows: The time spent in locating the certificates and making surveys for March of the Thomas Scott 1,535 acres, Alexander Coates 1,280 acres, Thomas Berryville 640 acres, and the Joseph Cochran league and labor, which was afterwards substituted by the Finesse Robinson certificate, was about 7 days, and the services rendered were of the following value, to wit: 1st, for traversing Indian frontier 40 or 50 miles from any settlement whatever for the purpose of finding the kind of land, as per contract, upon which to make said location, forty dollars; 2nd, by going or sending a team 55 miles in a different direction to Stinson's mill, near Bonham, in Fannin county, for the purpose of procuring breadstuffs with which to feed surveyor, two chainmen, and one marker and hand to keep and manage pack and other animals, thirty dollars; 3rd, pay of four hands at $1.00 each per day from the time of leaving home to do said surveying and return, seven days, twenty-eight dollars; 4th, board of four hands seven days at fifty cents each per day, fourteen dollars; 5th, legal surveying fees of surveyor, one league and labor, thirty-one dollars; 1,535 acres, nineteen dollars; 1,280 acres, sixteen dollars; 640 acres, twelve dollars; total surveying fees, seventy-eight dollars. We, Howeth and Twitly, were not to obtain patents on the lands. The contract was to select, locate, and survey the land by virtue of the said certificate, for which we were to receive one-sixth of the land. The contract and circumstances was this, that A. M. March, acting agent for his brother, S. W. March, brought the Finesse Robinson certificate to Howeth and Twitly for the purpose of being put in the place and stead of the Joseph S. Cochran certificate, which had proved to be fraudulent, which we did, as per substitue contract of date July 28th, 1855.

422 To the 5th Int. he answers: Howeth and Twitly received the Finesse Robinson certificate from A. M. March, brother and acting agent of S. W. March. A. M. March had possession of said certificate, but claims that his brother, S. W. March, was the owner thereof. He either exhibited his title papers or explained to our satisfaction that his brother, S. W. March, was the owner of the certificate, and that the patent would issue to his brother, S. W. March. I think he exhibited his title papers, but am not certain about it. Howeth and Twitly did believe that the Finesse Robinson certificate belonged to S. W. March when they did the things and incurred the expenses testified to by me in my answer to the 4th interrogatory above mentioned. They believed from either having seen the chain of title or from the explanation made by A.

M. March, in whose possession the certificate was. They did not know there was any question about the title to the certificate.

To the 6th Int. he Ans.: S. W. March did convey to Wm. Howeth and W. C. Twitly a part of the land located by virtue of Finesse Robinson certificate, namely, nine hundred and sixty acres out of the northwest corner and three hundred and eighty-three acres out the southwest corner; total, thirteen hundred and forty-three acres. The deed was made on or about July 17th, 1857. The consideration was for certain services rendered and moneys expended in locating the certificate mentioned in answer to Int. 4th and surveying the land on which the same is located.

To the 7th Int. he Ans.: They did; 960 acres out of the northwest corner of the Finesse Robinson survey and 383 acres out of the southwest corner of same. The conveyance or bond for title was made to G. C. Dugan April 9th, 1858, and the deed was made to said Dugan on the 5th day of October, 1860. The consideration was one dollar
423 per acre cash paid in hand at the time of sale.

To the eighth Int. he Ans.: G. C. Dugan, when he purchased the land mentioned above, believed that he was getting a good title thereto. He did not know of any defect in the title he was getting. He did not know of any conveyance made by Finesse Robinson prior to the one under which his vendors claimed.

To the 9th Int. he answers: About six or eight years ago W. H. Cundiff came to my house, in Gainesville, Cooke county, Texas, and there informed me that a certain party or parties were claiming the Finesse Robinson land adversely to S. W. March. This was the first time I heard of any one claiming adversely to S. W. March.

To the 10th Int. he answers: I have stated all that I can now recollect.

Answers to Cross-Interrogatories.

To 1st cross-int. he Ans.: My age is 64 years; I reside in Gainesville, Cooke county, Texas. I am not a party to this suit. I am in no way interested, except that W. C. Twitly and myself conveyed a part of the Finesse Robinson land to G. C. Dugan. I am not related to any of the parties to this suit.

To second cross-interrogatory he answers: I was in the surveyor's office in the town of Sherman, Grayson county, Texas, in April or May, 1852, for purpose of making some files on lands in Grayson county, at which time S. Bostick, who was acting as deputy
424 surveyor or file receiver, *who* informed me that J. P. Dumas and the Alexanders were likely to have a lawsuit over the Finesse Robinson survey of land in that county; that the field-notes of the same was or would soon become forfeited by their not being returned to the general land office, at which time I both saw the certificate and the field-notes. It was then in the surveyor's office.

To the 3rd cross-int. he answers: I do say positively and mean to be understood that at the date I first saw the Finesse Robertson certificate in Sherman, in 1852, that there was no transfer of said certificate indorsed thereon, and that there was no paper or other

substance fastened on it so as to obscure or cancel a transfer written thereon, and I further positively say that at the time the Finesse Robinson certificate left the surveyor's office at Gainesville, in Cooke county, with the field-notes to the land in controversy and given to A. M. March for S. W. March to take or send to the general land office, in the year 1855, there was no transfer indorsed on said certificate to Warren L. Underwood, and that at said time and date there was no piece of paper or any other substance so attached or fastened to said certificate so as to cancel or obscure any indorsement thereon.

To the 4th cross-int. he answers: I never saw said certificate since it and the field-notes of the land in controversy were delivered into the possession of A. M. March, a brother and agent of S. W. March, at Gainesville, Texas, in the year 1855, until I saw it in the possession of the clerk of the district court of Montague county, at Montague, Texas, in the summer of 1878, At the time the certificate was delivered to A. M. March, in 1855, there was no indorsement thereon or any paper pasted thereon or attached thereto. I have seen said certificate once since it was filed in the general land office,
425 *at* that was at Montague, Texas, in the year 1878, as above mentioned. I saw it in the district clerk's office at Montague, Texas, and at which time W. O. Davis, an attorney-at-law, requested W. T. Waybone, Wm. Hudson, and myself to go to said clerk's office for the purpose of examining said certificate, said certificate having been sent to the district clerk by order of the district court of Montague county. I then examined said certificate in the presence of the district clerk, W. O. Davis, Wm. Hudson, and W. T. Waybourn. I then and there saw indorsements on said certificate which were not there when I saw it in the year 1852 and 1855. The indorsement was made to Underwood or Underwood and Robbins, I do not remember which. I do not think there was any papers pasted on it at that time so as to cover the indorsements. I do not know who put them on it nor for what purpose unless to acquire the land.

To the 5th cross-int. he ans: I do not know anything about the purchase of the certificate by S. W. March or what he paid for it, except that I am satisfied he owned it. I find from the record of the contract between A. M. March and W. C. Twitly and myself that the Finesse Robinson certificate was substituted in the place of the Joseph S. Cochran certificate July 28th, 1855, about which time, I suppose, it was applied and located on the Joseph Cochran land. March purchased the certificate before July 28th, 1855, and on or about that time was substituted in the place of the Cochran certificate. W. C. Twitly made the field-notes of the Robinson field-notes from the Cochran field-notes, and the surveyor's record shows that Daniel Montague, the district surveyor, scratched out the name of Joseph Cochran and inserted the name of Finesse Robinson. I find that some name has been scratched out and Finesse Robinson interlined, and the old index in Book "B" shows Joseph Cochran field-notes to have been on the page on which the Robinson field-notes appear. The old date to the field-notes of the Cochran was not

changed. The land on which the Robinson certificate is located is worth from 3 to 5 dollars per acre, exclusive of improvements.

426 To the 6th cross-int. he answers: I considered S. W. March a man with fair education. He was a physician; was about 33 years of age when he purchased said certificate. He was a cautious trader and a successful one; had considerable property, and a successful business man. He was a man above ordinary intelligence and had considerable mental cultivation. I never saw said certificate in the hands of S. W. March, but did in the hands of his brother, A. M. March. It was in the possession of A. M. March, W. C. Twitly, Daniel Montague, and myself.

To the 7th cross-int. he answers: I examined said certificate in the presence of A. M. March and ascertained to my satisfaction that the certificate was genuine and the title good to S. W. March.

To the 8th cross-int. he answers: The deed from S. W. March to Howeth & Twitly was made July 17th, 1857, which was after the issuance of the patent to the land, which, I think, was in 1855. S. W. March conveyed 1,342 acres to Howeth and Twitly and they transferred 1,343 acres to G. C. Dugan April 9th, 1858, by bond, and made deed Oct. 5th, 1860. I do not know of any other sales. The consideration of the deed from S. W. March to Howeth and Twitley was services rendered and money expended in locating and surveying lands by virtue of certificates, mentioned in my answer to 4th direct interrogatory. G. C. Dugan paid one dollar per acre cash for the land sold him by Howeth and Twitly. I do not recollect whether the deed from S. W. March to Howeth and Twitly was a warranty deed or not, but think it was a quitclaim deed, as it was not our custom to take warranty deeds to locative interests in land. The deed from Howeth and Twitly to G. C. Dugan I think was a warranty deed. I am satisfied it was a warranty deed. I cannot

427 attach the original deeds, as they are not in my possession. I know nothing of my own knowledge of any lease or leases. I know nothing, except from hearsay, about the land being leased. I have no lease of said land in my possession. I do not of my own knowledge know of any lessees living on the land or on any land adjoining same.

To the 9th cross-int. he answers: I do not know of my own knowledge whether any of said land has been occupied by S. W. March, but have heard that it was. I cannot answer this interrogatory by stating any fact that I know of my own knowledge.

To the 10th cross-int. he answers: I think a fair market value of said league of land would be from three to five dollars per acre, exclusive of any improvements. I know nothing of the improvements on the land, if any, of my own knowledge.

To the 11th cross-int. he answers: I know nothing about it of my own knowledge.

To the 12th cross-int. he answers: I know nothing about the improvements on the land or their value of my own knowledge.

To the 13th cross-int. he answers: I first heard of and saw the Finesse Robinson certificate in the county surveyor's office, in Sherman, Texas, in April or May, 1852. It was in the possession of the county

surveyor. I do not know who claimed to have the control of the certificate. I do not know how Dennis Trammell came to learn of the certificate. I know nothing whatever about his buying
428 it and selling it to S. W. Marsh. I never knew Trammell nor where he lived, nor never had any correspondence with him at any time about the certificate or anything else. I do not know where the land certificate was on May 12th, 1855, or June 23rd, 1855.

To the 14th cross-int. he answers: All I know about J. P. Dumas in connection with the certificate was that he filed another certificate on the land in Grayson county upon which the Finess Robinson certificate was filed or surveyed. I never saw the certificate in the possession of J. P. Dumas. I never heard him say he had it. I never was informed in any way that he did have it. I never had any conversation with J. P. Dumas about the Finess Robinson certificate. Dumas never told me anything about any transfer on the back of it. I do not know where Dennis Trammell got said certificate, if he got it. I never conferred with Dennis Trammell about said certificate nor he with me.

To the 15th cross-int. he answers: I do not know how long after said Finesse Robinson certificate was located it was returned to the general land office. The Finess Robinson certificate was located in Grayson county, Texas; so I have understood. All I know about it being located in Grayson county is what I learned from Solomon Bostick, file receiver or deputy surveyor in the surveyor's office, and what I saw in the surveyor's office. Bostick showed me the certificate and field-notes. I do not know who had the certificate for location in Grayson county, Texas. I never had any conversation with Dumas about the land in Grayson county. I do not know of my own knowledge whether Dumas had any claim on the land or not, nor of my own knowledge do I know why the Finess Robinson certificate was removed from the Grayson county location. I believe it was first located in Grayson county in 1851; do not know for certain.

429 To the 16th cross-int. he answers: The last time I saw S. W. March he was at my house in Gainesville, Texas. He told me he was thinking of building a house on his land in Montague county, but said nothing about what survey he intended to build on. I do not know on what survey the house was built. I never saw the house or heard what survey it was on. I never heard him say that he would not build on the land in controversy, because he was not satisfied with the title or anything to that effect. I know nothing about any improvements on the land, their character, etc., previous to nor since the death of S. W. March, nor did I ever hear him say anything about the improvements with the title being in dispute.

WILLIAM HOWETH.

Sworn to and subscribed before me on this the 11th day of May, 1882.

[SEAL.] H. E. ELDRIDGE,
Notary Public in and for Cooke County, Texas.

STATE OF TEXAS, }
County of Cooke. }

I, H. E. Eldridge, a notary public in and for the county of Cooke and State of Texas, do hereby certify that the foregoing answers of William Howeth, the witness before named, were made before me and were sworn to and subscribed before me by said witness.

Given under my hand and official seal this the 11th day of May, 1882.

[SEAL.] H. E. ELDRIDGE,
Notary Public, Cooke County, Texas.

430 Interrogatories propounded to James H. Starr, who resides in Harrison county, Texas; James R. Arnold, who resides in Caddo parish, State of Louisiana; James Morris and James A. Dallerhide, who reside in Little River county, Arkansas; George F. Moore and R. S. Walker, who reside in Travis county, Texas; Sam. Allen and W. R. Baker, who reside in Harris county, Texas; J. P. Smith, who resides in Tarrant county, Texas; Robert Elgin, who resides in Harris county, Texas, and Alfred Grooms, who resides in Travis county, Texas.

Int. 1st. What is your name, age, residence, and occupation?

Int. 2nd. To Morris, Dallerhide, Starr, Arnold, Moore, Walker, Baker, and Allen: Are you acquainted with or were you ever acquainted with one Finess Y. Roberson, *alias* Finess Y. Robertson; Oscar Engeldaw, George Allen, and H. R. Dance, or either of them, and which of them; when, where, and how long; are they or such of them as you knew living or dead; when and where did they, or such as you know, die, if dead?

Int. 3rd. Were you in any manner and in what way acquainted with the signature or handwriting of all or any of said parties? If so, of which and how were you so acquainted, and for how long a time?

Int. 4th. Please examine a certain transfer which will be shown to you by the officer taking your depositions, purporting to be a transfer of said Roberson's head-right certificate, and state whether or not, in your opinion, you know any of the signatures to such transfer, either of the grantor or maker, or that of any of the witnesses thereto; and which of them you do know, and whether they are or not, in your opinion, the genuine signatures of such of the parties as you may have known.

Int. 5th. In your opinion, whose signatures do you know to said transfer?

431 Int. 6th. Please identify said transfer, about which you may have testified, by placing thereon some mark or in some other way referring to it, that a court may know what transfer you are deposing about?

Int. 7th. What was the character of the said witnesses to the aforesaid transfer, if you know it, for honesty, intelligence, and fair dealing?

Int. 8th. When, if ever, did Finess Y. Roberson leave or move

from Texas, and where did he move to—into what State, county, or country—and how long did he live there?

Int. 2nd. To Robert Elgin and Alfred Groom: What official or other position did you hold during the year A. D. 1855, and especially during June, July, and August, A. D. 1855?

Int. 3rd. To Robert M. Elgin and Alfred Groom: While you may have been connected with the general land office of Texas during A. D. 1855, and especially during June, July, and August of said year, did you see or in any manner handle—and, if so, in what way—the Finesse Robertson league and labor land certificate number 127, issued in Houston county, Texas, in 1838?

Int. 4th. State whether or not you saw, then, during the year A. D. 1855 any transfer endorsed on the back of said certificate. If not, was there anything to prevent or make difficult your seeing such transfer? If so, describe particularly what it was prevented you from seeing such transfer if anything did prevent you seeing same.

Int. 5th. Was there any fastened on or to said certificate when it came into the general land office in A. D. 1855? if yea, what was it and how do you know? State fully all matters connected
432 with any papers which may have been on said certificate and what it, the paper, hid or covered, if anything, and how and why you know.

Int. 6th. Was the certificate marked "file"? If so, when and by whom? Where was the file-mark placed? If not on the certificate itself, why was it placed on something else?

Int. 7th. If in your answer either of you have stated in substance that when the said certificate came into the general land office, in A. D. 1855, the same was covered on the back thereof by and with a piece of brown or other paper, then state whether or not the said brown paper was ever removed or taken from the back or off of said certificate. If yea, when, where, how, and by whom. State, then, after this was done, what was discovered under said brown or other paper, and, if a transfer, from whom and to whom. What was the appearance of said certificate when you first saw same—worn or mutilated? If yea, much or little, and such as to show or not any cause for covering same with any paper to preserve the pieces, and state whether the transfer inquired about could or not be seen before taking said brown or other paper off of said certificate and when same was first discovered and how it was it was discovered.

Int. 8th. Did you ever know or does the records of general land office show that one W. C. Caruthers acted in 1842 as deputy surveyor? If yea, of what county and district was he a deputy surveyor of?

Int. 2nd. To J. P. Smith: Do you know anything about the Finesse Robertson league and labor of land — Montague county, Texas? If yea, state its value and all you may know about the location thereof.

Int. 3rd. Have you any interest in this suit or are you in
433 any way related to any of the parties to this action? If so, in what way and to whom?

Int. 4th. State whether or not any one—and, if so, who and when—

told you about the placing or pasting of a certain paper on the back of the Finesse Roberson league and labor land certificate, and state fully all that was said to you on the subject.

Int. 5th. State whether or not you know one James P. Dumas. If yea, when did you first get acquainted with him; what office, if any, did he hold in 1854 or 1855 and prior thereto, and how long did you hold such office and in what county or district?

Int. 6th. Did you ever know one W. C. Caruthers, a deputy surveyor? If so, when, and where did he live and hold office as such deputy surveyor?

A. M. CARTER AND
WELLBORN, LEAKE & HENRY,
Solicitors for Plaintiffs.

Service of within accepted, and we consent that the depositions of any of the witnesses named in the notice may be taken in Travis county, Texas, by any officer of said county authorized by the laws of the State of Texas to take and return depositions. Time waived.

SAWNIE ROBERTSON,
Solicitor for Def'd'ts.

434 *Cross-Interrogatories to Morris, Dallerhide, Starr, Arnold, Moore, Walker, Baker, & Allen, Witnesses for Plaintiffs.*

Cross-int. 1st. If you have stated that you are acquainted with the handwriting or signatures of Finesse T. Roberson or Robertson, Oscar Engledow, George Allen, and H. B. Dance or either of them, please state the last time you saw either of them write anything or saw anything that you knew was written by either of them. Where are each of said parties now?

SAWNIE ROBERTSON,
Def'd'ts' Solicitor.

Cross-Interrogatories to Robert Elgin and Alfred Groom.

Cross-int. 1st. How do you know that there was any thing or paper attached or fastened to the Finesse Robertson certificate when it came in the land office, in 1855 or about that time? How do you know but that the paper referred to has not been attached to said certificate since that time? When was your attention first called to the paper on said certificate and who by? When were you last employed in the land office?

Cross-int. 2nd. What was the custom in the land office of Texas, in 1855 and for a few years previous to and after said year, as to where file-marks on certificates were placed? Were the file-marks ever placed on the envelope containing the certificate or on a piece of paper filed with, attached to, or inclosing it? If yea, please state the proportion of times the file-marks was placed on the certificate itself and on the envelope or piece of paper attached to or accompanying it.

Cross-int. 3rd. When was the pretended transfer on the back of

the Finesse Roberson certificate first discovered and who by? Who was said transfer to, and why was it not sooner discovered by such person?

SAWNIE ROBERTSON,
Def'd'ts' Sol'c'r.

435 *Cross-Interrogatories to J. P. Smith.*

Cross-int. 1st. Where do you live now and how long have you lived at such place? What is your occupation? Did you ever engage in any way in the land business? If yea, where at and who with? Were you ever engaged or interested in any land transaction with any person by the name of Cundiff? If yea, which one of the Cundiffs and what was the nature of the transaction?

Cross-int. 2nd. Where is the person whom you say told you about the pasting or placing of a piece of paper on the Finesse Roberson certificate now? Who was present when he told you what you have testified about in answer to Int. 4th? Where did he tell you this, and when? How long had you known him at that time, where did he live at that time, and where did you live? How did plaintiffs find out that he told you this, and when did they find it out? Did said person tell you this as a secret or publicly? If as a secret, how did you come to tell it? If publicly, give the name and residence of some one besides yourself who heard it.

Cross-int. 3rd. How long have you known the Cundiffs, and what interest has each of them in this suit? Do you not know that the deed to James J. R. Cundiff was only made to give the Federal court jurisdiction of this case, and thereby a trial where they are known?

SAWNIE ROBERTSON,
Solicitor for Defendants.

436 *Answers of the Witness, Alfred Groom.*

Ans. to 2nd Int. I was assistant clerk in the general land office during the year 1855 and during June, July, and August of that year.

Ans. to 3rd Int. I saw the Finesse Robertson league and labor land certificate number 127 in the land office during the period mentioned in preceding answer, and made the indorsement as follows: "File 591. Fannin 1st-class certificate, 1 league and 1 labor. Fines. Filed 7th August, '55."

Ans. 4th Int. I do not know about the transfer on the back. At the time it was filed in this office it appears to have had a piece of brown paper pasted over the back. As the indorsements before named are in my handwriting, I am sure that the brown paper was so attached to the certificate. I folded and filed the certificate in the land office. If I had discovered the transfer on the back of the certificate I would have mentioned it and to whom made in my indorsements. As the brown paper is hard to see through, it may have been under it a- escaped my notice. I found the following indorse-

ments on the certificate when it was brought to the land office: "Phineas Y. Robertson, to transfer. Warner L. Underwood." This transfer is to be seen on the back of certificate by holding it up to the light. This paper was pasted over the back of the certificate, and was removed (by soaking in water) for the purpose of ascertaining if transfer was not made upon the certificate; also there appears a figure one on the upper corner to the left as folded and just before the word "filed," which figure one was not made by me.

Ans. to Int. 4th. I find nothing on the certificate after removing the brown paper that I recognized as the work of any one in the land office at that time. I cannot tell what transfers were on
437 the certificate at that time except from the general appearance of the certificate and the fact that Warner L. Underwood came to Texas in 1838, as I understood. I do not recollect. The paper that was pasted over the certificate was sufficient to have prevented me from seeing the transfer if it was on it at that time.

Ans. to 5th Int. I do not know what was pasted on the certificate when it came into the land office except from the fact, as I have stated, that the brown paper must have been pasted over the certificate, as it has my indorsement on it instead of the certificate. The paper appears to have been pasted on certificate since the removal of the paper. A transfer to Warner L. Underwood can be seen dated March 5th, 1838.

Ans. to 6th Int. I—already answered the question in my preceding answer.

Ans. to 7th Int. The indorsement with reference to removal of the brown paper before referred to was made on the certificate by Fred. W. Moore. It is in his handwriting. I do not know when this indorsement was made except that it was subsequent to August 7th, 1855, when I filed the certificate. I cannot say from memory anything about the mutilated condition of the certificate, when it was filed in the office. I do not know except from the indorsements when the transfer pasted over by the paper was discovered.

Ans. to 8th Int. I do not know what the records of the land office show as to W. C. Caruthers acting as surveyor. I have not got them before me and do not remember their contents.

ALFRED GROOMS.

438 *Answers to Cross-Interrogatories.*

Ans. to 1st Int., cross. I know from the fact that my indorsement is made on the piece of paper attached, and in my indorsement I describe it as a certificate that the paper was on this certificate at the time I made the indorsement. I know that the paper referred to has not been attached since that time, because it must have been on the certificate when I made the indorsement or I would not have known anything about the certificate. I cannot recollect when or by whom my attention was first called to the paper on said certificate. It was about 4 or 5 years ago or perhaps longer. I do not remember by whom. I am employed in the land office now.

Ans. to 2nd X Int. It was not the custom of the land office in 1855

or since that time to put the file-mark on anything but the certificate except when there was not room on it to make the file-mark. I do not know when the transfer on the back of the certificate was first made or by whom. I have stated as near as I could about what time it was first called to my attention.

ALFRED GROOMS.

STATE OF TEXAS,
County of Travis.

I, F. G. Morris, a notary public in and for said county and State, do hereby certify that foregoing answers of the witness, Alfred Grooms, to the annexed direct and cross interrogatories were signed and sworn to before me by him.

Given under my hand and seal of office this the 17th day of May, A. D. 1882.

[SEAL.]

F. G. MORRIS,
Notary Public, Travis County, Texas.

439 *Answers of the Witness, Robert Elgin.*

Ans. to 1st Int. My name is Robert M. Elgin; age, 56 years; occupation, land agent of the Houston & Texas Central Railway Company, and residence, Houston, Harrison county, Texas.

Ans. to Int. 2nd. During the entire year 1855 I held the position of chief clerk of the general land office of Texas.

Ans. to Int. 3rd. I cannot say from memory that I saw handled or saw the Finesse Robertson certificate at that time. In my official capacity I examined and handled so many certificates that it is not likely I would remember the appearance or other particulars in regard to any one. I must therefore answer from the appearance of the papers and the facts shown upon the face of them. My indorsement on the file passing it as correct for patenting to S. W. March, assignee, and the indorsement of the patenting clerk that he made the patent on the 8th of August, 1855, all of which are recognized, show that I did handle the certificate and examined it on or about that date.

Ans. to Int. 4th. I am certain that I saw no transfer on the back of the certificate at that time; otherwise I would not have patented or passed it for patenting to March. It would have been difficult for me to have seen the transfer on the back of the certificate, because it is evident that it was concealed by a brown paper placed over it and pasted to the back of the certificate. All papers were carefully examined first by an assistant clerk and afterwards by myself before passing a claim for patenting, and if the brown paper had been merely attached this transfer would have been noticed.

440 Ans. to 5th Int. The brown paper mentioned was either placed on the certificate before or at the time it was filed, and I think before for reasons hereafter stated. During the whole time that I was connected with the general land office, from 1848 to 1865, it was the invariable practice to refold and indorse every

paper that was filed with the ordinary surveys. The papers were folded around a *til* folder to make the files of uniform size, and each paper was indorsed in a manner peculiar to that office. On this certificate itself there is no land office indorsement, but there is an indorsement on the brown paper now attached thereto in the same handwriting and in date and general appearance cotemporaneous with the indorsements on the other papers filed at the same time and also between folds corresponding with the usual land office folds and fitting those on the certificate. The indorsement is in the handwriting of Alfred Grooms, who was then and is now a clerk in the general land office (with the exceptions mentioned below), and *are* as follows:

"File 591."
"Fannin, 1st class."
Certificate, 1 league and 1 labor.
Fines Robertson.
Filed 7th August, "'55."

The figures "591" are in the handwriting of Thomas Patterson, who was the registering clerk. On comparing them with the register of that day—August 7th, 1855—I find that the same figures on the register correspond in shape and appearance and were made by the same person. Beneath the above indorsement is the following in the handwriting of Fred. W. Moore, who in 1855 was receiving clerk and in 1866 and 1867 or part of those years was chief clerk:

"Phineas Robertson
to
Warner L. Underwood." } Transfer.

441 This transfer is to be seen on the back of the certificate by holding it up to the light. This was written after the 8th of August, 1855; otherwise the patent would not have been issued; moreover, Capt. Moore's position at that day would not warranted his making the last-quoted indorsement. It would more likely have been made by the chief clerk, as such indorsements or remarks were generally. For this reason I think he made it after he became chief clerk, in 1866 or 1867, as well as the following, also in his handwriting—all on the brown paper—apparently made subsequently. This paper was pasted over the back of the certificate, and was removed (by soaking in water) for the purpose of ascertaining if transfer was not upon the certificate.

Ans. to 6th Int. The certificate was marked filed, as stated in my last answer, not on the certificate itself, but on a paper pasted on it, and by Alfred Grooms and assistant clerk, whose duty it was to fold and indorse and, as we called it, "put up the files." It was not the custom at that time to sign the indorsement of filing.

Ans. to 7th Int. In my answer to the 5th interrogatory I have stated the facts showing when the certificate came into the general land office. The register in that office shows that the certificate was filed at that time by an initial, "R.," in a column showing whether or not certificate accompanied the field-notes; also the fact that

a brown paper was pasted on the back of the certificate and was subsequently removed by F. W. Moore. On the back of the certificate as now exhibited is a transfer purporting to have been made by Phineas Y. Robertson to Warner L. Underwood, which must have been there when filed, but was obscured by the brown paper. I do not pretend to remember how the certificate looked when I first saw it. Its appearance shows that it may have had the paper pasted over it to preserve the pieces, it being worn in
442 pieces in the original folds. I have stated that this paper was put on at the time or before it was filed, because it was on the certificate when Grooms marked it filed. I do not think he did it, because it was the custom in the office, when necessary to patch a paper which had writing on the back, to use transparent paper; moreover, the certificate shows three sets of folds. The first or original folds are worn through. These do not show on the brown paper. The second folding, which is not a land office fold, does show on the brown paper, and also the land office fold between which are Grooms' indorsements. These two last-named folds show that the paper was patched before filed and refolded, and was again folded in land office form after being filed, or rather at the time of filing. The folds most worn do not appear on the brown paper, showing that it was put on subsequently and to protect the certificate. The writing of the transfer across these torn seams was done before and not after they were worn. My knowledge of the manner in which papers are kept in the land office is such that I know the certificate could not have been worn in that way after it was filed there. The transfer to Underwood is dated April 5th, 1838. I see no indications in the writing or appearance of the paper going to show that it was made at a later date.

Ans. to 8th Int. I do not know W. C. Caruthers, and without an examination that I cannot well make, not being an officer, cannot tell if the records of the general land office show that he was a deputy surveyor in 1842. The certificate and brown paper are hereto attached, marked A and B respectively.

ROBERT N. ELGIN.

443 *Answers to Cross-Interrogatories.*

Ans. to X Int. 1st. I know that the brown paper was attached to or pasted on the certificate before it was filed in the general land office by the folds and indorsements which I recognize as genuine and cotemporaneous with the indorsements on the other papers, and because if it had not been on the back of the certificate the transfer to Underwood would have been seen, and the indorsement would have been made differently—that is to say, the indorsement would have been on the certificate itself and the transfer noted.

Ans. to X Int. 2nd. From 1852 to 1865 it was the custom in the general land office to indorse each paper separately and place on it the file number and date of filing. All the papers pertaining to the particular claim were then inclosed in a wrapper or cover, which was likewise indorsed with the file number, class, name, and quan-

tity. If a paper was so worn as to be in pieces it was generally patched or pasted over with another paper so as to protect it without defacing the writing. When so written over as to leave no room for indorsements a piece of blank paper was generally attached, on which the indorsement was made. This was not very frequent, but I cannot say how often it occured.

Ans. to X Int. 3rd. I do not know when or by whom the transfer was discovered. From the circumstances stated in my answer to direct Int. 5th, I think it was brought to light by Fred. W. Moore, while he was chief clerk in 1866 or 1867.

ROBERT M. ELGIN.

444 STATE OF TEXAS, }
County of Travis. }

I, F. G. Morris, a notary public in and for said county and State, do hereby certify that the foregoing answers of the witness, Robert M. Elgin, to the annexed direct and cross interrogatories *was* signed and sworn to by him before me.

SEAL. Given under my hand and seal of office this 18th day of May, A. D. 1882.

F. G. MORRIS,
Notary Public, Travis Co., Texas.

George F. Moore's depositions were not taken because he was too unwell to undergo the examination and make answers.

F. G. MORRIS, *Notary.*

445 Direct interrogatories propounded by complainants to Wm. Robinson, Allen Robinson, and Matilda Gartney, who reside in the county of Sevier, State of Arkansas.

Int. 1st. What is your age, in what State were you born, and in what, if any, other State have you lived?

Int. 2nd. State the name of your father. State whether he ever lived in Texas; and, if so, when and in what county. State if he ever left said State; and, if so, when and to what State and county he went, and all the places that he lived at while you knew him, and when and where he died. State if he had any uniform way of spelling his name; and, if he had, state what it was. State if ever you knew of his writing or spelling it otherwise; and, if yea, state how.

Int. 3rd. What, if anything, do you know about his having ever had a claim to land or a land certificate in the State of Texas? State what, if anything, you know about his claim or not claiming such. If you know of his having sold his head-right certificate state what you know about that, who to and when, if you ever heard him make statements about having sold or disposed of it. State that.

Int. 4th. If you ever knew one Phinease Robinson, and you was not his son or daughter, then state how, if at all, you were related to him, and in response to this interrogatory answer the above interrogatories No. 2 & 3 as if addressed to you in regard to said Phineas Robinson, and answer them fully in every particular.

Int. 5th. Did you know David Trammell and Dennis Trammell; and, if so, where and when? Did you know their characters
446 for honesty or reputation, for veracity, in the communities in which they lived? And, if you do, state what they were. If you know of any effort or attempt by them or either of them to purchase from said Phineas Roberson his head-right certificate for a league and labor of land in Texas you will please state all you know about —, when and where it was, what was said and done, and who by, and what statements said Robertson made about it, and when.

Int. 6th. Did you know one J. H. Bradshaw; and, if so, when and where? Do you know his general reputation for truth and veracity in the communities in which he has lived? And, if you do, state whether it was good or bad, and state what it is now. State what his reputation was for honesty and integrity, if you know.

Int. 7th. State if you were acquainted with the handwriting of said Phineas Robinson, Dennis Trammell, David Trammell, and J. H. Bradshaw; and, if so, state how you became acquainted with the handwriting of each. You will please examine the paper purporting to be signed by Fines Robrtson, as the grantor, and by J. H. Bradshaw and David Trammell, as subscribing witnesses, transferring to Dennis Trammel the head-right certificate of said Robrtson for a league and labor of land granted him by the Republic of Texas, No. 127, now exhibited to you, and say whether you recognize the handwriting of either the body or either the signatures to the same; and, if so, specify which, and say in whose handwriting is the signature "Fines Robertson," in your opinion, genuine or not, and your reason for your opinion. Is said signature the genuine signature of Phineas Robinson referred to in the preceding interrogatories, in your opinion? And state your reasons for your opinion, if you have any opinion or knowledge on the subject, or as to whose hand-
447 writing the said signature is. State it with your reason. If you ever saw said paper before, state when and under what circumstances, in whose possession was it, and for what purpose, what was then said or done. Identify the said paper, to which you now refer, in some way so that it may be known.

Int. 8th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties in this cause or either of them or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

(Signed) A. M. CARTER,
WELLBORN, LEAKE AND HENRY,
Solicitors for Complainants.

448 *Cross-Interrogatories to William Robinson, Allen Robinson, and Matilda Gartney, Who are Residents of Sevier County, Arkansas.*

Cross-int. 1st. Did you ever see one W. H. Cundiff, of Texas? If so, when, where, and how often have you seen him, and what business was he on when he saw you?

Cross-int. 2nd. Do you know the general reputation of said Cun-

diff as a land dealer in Houston county, Texas, the field of his former labors, or in Wise county, Texas, his present abode?

Cross-int. 3rd. Did said Cundiff ever talk to you in reference to what your testimony would be in this suit? If so, where, when, and how often?

Cross-int. 4th. Who is present while your answers are being taken? When and where did you last see Mr. Cundiff, and where is he while his answers are being taken?

Cross-int. 5th. Where, when, and how long did you know J. H. Bradshaw? Did he ever live in Sevier county? If so, how far and in what direction did he live from Paraclifta, the then county-seat? How far did said Bradshaw — from Phiness Roberson?

Cross-int. 6th. Is said Bradshaw related to you in any way; and, if so, how related?

Cross-int. 7th. Is it not true that you several years ago employed a lawyer named Donohue, of Clarksville, Texas, or some other
449 lawyer to recover the Phiness Robertson head-right survey in Texas? If so, state what lawyer you employed and what you were to give him to recover the land.

Cross-int. 8th. Did the heirs of Phiness Robertson consult James S. Dollarhide before they employed a lawyer to hunt up to sue for and recover their father's head-right in Texas?

Cross-int. 9th. Give the full names and ages of all Phiness Robertson's children. If his daughters were ever married state when, how often, and to whom.

Cross-int. 9th. Was not Phiness Robertson once constable in Sevier county, Arkansas? If so, state when and how long he held that office.

Cross-int. 10th. Have you any letters, documents, or signatures in the handwriting of Phiness Robertson that you know to be genuine? If so, attach them to your answers, and state how you know them to be genuine.

Cross-int. 15th. Did H. G. Rind and David Foran ever hold office in Sevier county, Arkansas? If so, state when and what offices they held.

Cross-int. 16th. During the year 1855 did H. G. Rind and David Faran hold office in Sevier county? If so, state what office each of them held and what was the county site of Sevier county at the time.

Cross-int. 17th. Were you acquainted with the general reputation of H. G. Rind and David Foran in Sevier county for honesty and fidelity in office? If so, state what their reputation was.

450 Cross-int. 18th. Were H. G. Rind and David Faran acquainted with Finess Y. Robertson, J. H. Bradshaw, Dennis Trammell, and David Trammell? If so, state your means of knowing that fact.

Cross-int. 19th. Was not Phiness Y. Robertson a constable in Sevier county while David Faran and H. C. Rine were holding office in the same county?

Cross-int. 20th. Are you not acquainted with the handwriting of H. G. Rind from a long and intimate acquaintance with him and

from having often seen him write and from frequent examination of papers in his handwriting?

Cross-int. 21st. Please examine the two certificates signed by H. G. Rind on the deed from Finess Roberson to Dennis Trammell. Are they not in the handwriting of H. G. Rind? Please examine the seal to said certificate signed by H. G. Rind. Is it not an exact impression of the seal then in use in Sevier county and now on file in Lockesburg, the county-seat?

(Signed) DAVIS & SAWNIE ROBERTSON,
Solicitors for March et al.

451 The depositions of Matilda Gartney and Allen S. Robinson, taken on the 15th day of May, 1883, at the residence of W. G. Gartney, in Sevier county, Arkansas, to be used, etc., etc., etc.

The said ALLEN S. ROBINSON, being first duly sworn, deposes and says as follows:

Ans. to 1st Int. I am thirty-five years of age; was born in the State of Arkansas; never lived in any other State.

Ans. to 2nd Int. My father's name was Phiness Y. Robinson. He lived in Sevier county, Arkansas, from my first recollection until his death in the year 1863. I do not know whether he ever lived in Texas or not; only know from having heard him frequently say he had lived in Texas. My father signed his name "Phiness Y. Robinson." I do not know of his ever signing or spelling his name any other way.

Ans. to 3rd Int. I have heard my father say he had obtained a certificate for land in Texas. I never heard him setting up claim to such land. I know nothing of his ever selling said land or certificate. I have no recollection of ever hearing him say he had ever sold or disposed of it.

Ans. to 4th Int. I knew one Phiness Y. Robinson; he was my father.

Ans. to 5th Int. I knew one Dennis Trammell; was not acquainted with one David Trammell. I was acquainted with Dennis Trammell in 1866, '8, '7. I do not remember ever hearing anything disrespectful about Dennis Trammell's character for honesty, but he was regarded a "monstrous" liar. I had seen Dennis Tram-
452 mell at my father's house before that time. I think it was about the commencement of the late civil war or soon after Dennis Trammell was at my father's house. I heard him and my father talking about lands in Texas. I suppose it was lands my father claimed in Texas. In the year 1866 or 1867, after the death of my father, Dennis Trammell and one Alex. Sulser tried several times to buy my interest in my father's land in Texas; they were both considered unreliable men and I was afraid to deal with them.

Ans. to 6th Int. I have seen J. H. Bradshaw; know but little about him. I cannot state anything particular against his character for truth and veracity.

Ans. to 7th Int. I was not acquainted with the handwriting of Dennis Trammell, David Trammell, or J. H. Bradshaw. I was ac-

quainted with the way and manner in which my father signed his name, but not with the character of his handwriting. I became acquainted with the way and manner of my father's signature by seeing him sign his name and noticing his signature and hearing him spell his name. I have examined the papers, purporting to be signed by "Fines Robrtson" as the grantor and by "J. H. Bradshaw" and "David Trammell" as subscribing witness-, transferring to Dennis Trammel the head-right certificate of said Robrtson for a league and labor of land granted him by the Republic of Texas, No. 127, now exhibited to me, and do not recognize the handwriting of either the body or either of the signatures to the same. I do not recognize the signature of "Fines Robrtson" being the handwriting of my father, Phiness Y. Robinson. I am satisfied it is not the signature of my father referred to in the preceding interrogatory for the reason heretofore stated. I cannot say in whose handwriting said signature is in. I never saw said paper before to-day. I will identify said paper by indorsing my name thereon.

453 Ans. to 8th Int. I am certain that it was after the death of my father, Phiness Y. Robinson, that said Dennis Trammell and Alex. Sulser tried to purchase my interest in my father's lands in Texas.

Cross-Interrogatories.

Ans. to 1st X Int. I have seen one W. H. Cundiff. I first met him on yesterday evening at this place. He never told me his business. I suppose he was looking up evidence in this suit.

Ans. to 2nd X Int. I know nothing of the general reputation of said Cundiff in Houston county or elsewhere.

Ans. to 3rd X Int. Said Cundiff never talked to me about what my testimony would be in this suit.

Ans. to 4th X Int. While my answers are being taken James S. Steel, Matilda Gartney, J. S. Dollarhide, and myself are now present. I last saw said Cundiff out digging fish bait. Said Cundiff is still out digging fish bait. Several others have passed in and out of the house since I commenced answering these interrogatories.

Ans. to 5th X Int. J. H. Bradshaw once lived in Sevier county; was never at his house; saw him but few times; do not know how far or in what direction he lived from Paraclifta; cannot say how far he lived from Phiness Y. Robinson.

454 Ans. to 6th X Int. Said Bradshaw is said to be my second cousin.

Ans. to 7th X Int. Several years ago myself and others of the Robinson heirs employed one Charles L. Dellahunty, of Mt. Pleasant, Texas, to recover certain lands that he informed us belonged to our father in the State of Texas. The said Dellahunty was to be at all the expense, and we were to give him half he recovered. I have never seen nor heard from Dillahunty since.

Ans. to 8th X Int. I never consulted Jas. S. Dallerhide before we employed said Dillahunty to hunt up and recover my father's headright in Texas.

Ans. to 9th X Int. In answer to this 9th interrogatory I hereby adopt and accept the answers of William C. Robinson as my answers to said interrogatory.

Ans. to 10th X Int. I have no letters or signatures in the handwriting of Phiness Y. Robinson in my possession.

Ans. to 15th cross-int. From my own personal knowledge I do not know that H. G. Rind or David Foran ever held office in Sevier county, Arkansas.

Ans. to 16th X Int. I do not know that H. G. Rinds or David Foran held office in Sevier county in 1855. I know the county site of Sevier was Paraclifta at that time.

455 Ans. to 17th X Int. I have frequently heard H. G. Rind and David Foran spoken of as good and efficient officers.

Ans. to 18th X Int. I do not know that H. G. Rind and David Foran were acquainted with David Trammell, Dennis Trammell, and Phiness Y. Robinson and J. H. Bradshaw. I suppose my father was acquainted with Rind and Foran, for I have heard him speak of them.

Ans. to 19th X Int. I do not know whether Phiness Y. Robinson acted as constable in Sevier county while H. G. Rind and David Foran were holding office in the same county or not.

Ans. to 20th X Int. I was not acquainted with the handwriting of H. G. Rind.

Ans. to 21st X Int. I have examined the two certificates signed H. G. Rind on the deed from "Fines Robrtson" to Dennis Trammell, and, not being acquainted with the handwriting of H. G. Rind nor impression of his seal, do not know whether the same is genuine or not.

A. S. ROBINSON.

Sworn to and subscribed to before me this 15th day of May, 1883.

JAMES S. STEEL,

[SEAL.] *Notary Public, Sevier County, Arkansas.*

456 The said MATILDA GARTNEY, being first by me duly sworn, on her oath says:

Ans. to 1st Int. I am 53 years of age; was born in the Territory of Arkansas. I have lived in the Republic of Texas and in the State of Louisiana.

Ans. to 2nd Int. My father's name was Phiness Y. Robinson. My father onced lived in Texas—in Robinson's colony, Texas. He went to Texas in 1835. He lived in Houston and Nacogdoches counties in 1837 and 1838 and left there in the year 1839 and went from there to the State of Louisiana. He left the State of Louisiana in the year 1841 and returned to Sevier county, Arkansas, his former home, where he resided until his death, which occurred in the year 1863. My father signed his name Phiness Y. Robinson. I never knew of his signing or spelling it any other way. I have heard my father say he had obtained a head-right certificate for land in Texas. I do not remember of ever hearing him say anything about having sold it.

Ans. to 4th Int. I was acquainted with one Phiness Y. Robinson. He was my father. I have already answered the above interrogatories Nos. 2 & 3.

Ans. to 5th Int. I was acquainted with one Dennis Trammell; was not acquainted with David Trammell. I have seen him, I suppose. It was in 1866 or '7 that I was acquainted with Dennis Trammell. The general character of Dennis Trammell in the community in which he lived at the times above stated was very bad. I knew nothing of any effort or attempt by Dennis or David Trammell or either of them to purchase from the said Finess Y. Robinson his head-right certificate for a league and labor of land in Texas.

457 Ans. to 6th Int. I have seen J. H. Bradshaw; had but a slight acquaintance with him; cannot state as to his character other than he was considered a wild, rude man.

Ans. to 7th Int. I was acquainted with the handwriting of Phiness Y. Robinson; was not acquainted with the handwriting of Dennis Trammell, David Trammell, or J. H. Bradshaw. I was acquainted with the handwriting of Phiness Y. Robinson by seeing him write and reading his writing. I have examined the paper purporting to be signed by "Fines Robrtson" as the grantor and by "J. H. Bradshaw" and "David Trammell" as subscribing witnesses transferring to Dennis Trammell the head-right certificate of said Robrtson for a league and labor of land granted him by the Republic of Texas, No. 127, now exhibited to me, on which I indorse my name, and do not recognize the handwriting of either the body or signatures to said papers. I am satisfied that the signature of "Fines Robrtson" is not the genuine signature of "Phiness Y. Robinson" referred to in the preceding interrogatories. This opinion is formed from seeing him write and signing his name. I do not know in whose handwriting said signature is. I first saw said paper yesterday evening.

Ans. to 8th Int. In the year 1866 or 1867 Alex. Sulser first came to my house and tried to purchase my interest in my father's land in Texas. Afterwards said Sulser and Dennis Trammell came to my house and proposed to buy my interest in the lands that belonged to my father, Phiness Y. Robinson, situated in the State of Texas. Trammell told me that I would lose the land and had better take a little something for it than to get nothing. He never stated or intimated that he had purchased or in any manner traded

458 with my father for said lands before that time.

Cross-Interrogatories.

Ans. to 1st X Int. I met one W. H. Cundiff at this place yesterday evening; first time ever saw him. I suppose he is getting up evidence in this suit.

Ans. to 2nd X Int. I know nothing of the reputation of said Cundiff as a land dealer in Houston county, Texas, or in any other place.

Ans. to 3rd X Int. Said Cundiff has never asked me what my testimony would be in this case.

Ans. to 4th X Int. The parties present while my answers are being taken are A. Warren, D. B. Ramsey, J. S. Dollarhide, Wm. Robinson, W. H. Cundiff, and James S. Steel and myself; said Cundiff has just returned from fishing; has asked me no questions; is sitting in the gallery.

Ans. to 5th X Int. The acquaintance I had with J. H. Bradshaw was in Sevier county, Arkansas. It was very slight. I never was at his house; cannot tell how far or in what direction he lived from Paraclifta, the then county-seat of Sevier county; cannot say how far he lived from Phiness Y. Robinson.

Ans. to 6th X Int. J. H. Bradshaw is said to be my second cousin.

459 Ans. to 7th X Int. Several years ago myself and others of the Robinson heirs—that is, I mean the heirs of Phiness Y. Robinson—employed one Charles L. Dillahunty, of Mt. Pleasant, Texas, to recover certain lands that he informed us belonged to our father, situated in the State of Texas; said Dillahunty was to pay all expenses and we were to give him one-half of the lands he recovered. I have never seen or heard from said Dillahunty since.

Ans. to 8th cross-int. I never consulted James S. Dallerhide in regard to employing a lawyer to recover our father's head-right to land in Texas.

Ans. to 9th X Int. In answer to this, the 9th X Int., I hereby adopt and accept the answers of William C. Robinson as my answers to said 9th interrogatory.

Ans. to 10 X Int. I have no letters or documents in my possession that I know to be the genuine signature of my father, Phiness Y. Robinson.

Ans. to 15th cross-int. I do not know that H. G. Rind and David Foran ever held office in Sevier county, Arkansas, except from the information of others.

Ans. to 16th X Int. I do not know that H. G. Rind and David Foran held office in Sevier, Arkansas, in the year 1855, only from the information of others. The county-*cite* of said county was said to be at Paraclifta at that time.

460 Ans. to 17th X Int. I was acquainted with their reputations for honesty and fidelity only from what I heard others say; from that it was good.

Ans. to 18th X Int. I do not know that H. G. Rind and David Foran were acquainted with Phiness Y. Robinson, David and Dennis Trammell, and J. H. Bradshaw.

Ans. to 19th X Int. I do not know whether or not Phiness Y. Robinson acted as constable in Sevier county, Arkansas, while H. G. Rind and David Foran were in office in the same county.

Ans. to 20th X Int. I am not acquainted with the handwriting of H. G. Rind.

Ans. to 21st X Int. I have examined the two certificates signed by H. G. Rind on the deed from "Fines Robrtson" to "Dennis Trammell" and the two seals thereto attached, and cannot say whether they are genuine or not.

MATILDA J. GARTNEY.

Sworn to and subscribed to before me this 15th day of May, 1883.

JAMES S. STEEL,

[SEAL.] *Notary Public, Sevier Co., Arkansas.*

461 *Answers to Interrogatories Propounded to William Robinson.*

Ans. to Int. 1st. I am 55 years of age. I was born in the Territory of Arkansas. I have lived in the Republic of Texas and the State of Louisiana.

Ans. to 2nd Int. My father was named Phines Y. Robinson. My father once lived in Texas. He lived in Robinson's colony, Texas. He went to Texas in 1835, and he lived in Houston and Nacogdoches counties to 1837 and 1838. He left there in 1839, and went from there to Louisiana. He left the State of Louisiana in 1841, and returned to Sevier county, Arkansas, his former home, where he resided until his death, in 1863. My father always signed his name Phiness Y. Robinson. I never knew of his writing or spelling it any other way.

Ans. to 3rd Int. I have heard my father say he had obtained a head-right certificate for land in Texas. I do not remember of ever hearing him say anything about having sold it to any one.

Ans. to 4th Int. I was acquainted with one Phiness Y. Robinson; he was my father. I have already answered the above interrogatories Nos. 2 & 3.

Ans. to Int. No. 5. I was acquainted with one Dennis Trammell; was not acquainted with one David Trammell. I have seen him. I suppose it was in 1866 and '7 that I was acquainted with Dennis Trammell in Sevier county, Arkansas. I cannot state as to character of Dennis Trammell for honesty and veracity. I know nothing of any effort or attempt by David or Dennis Trammell or either of them to purchase from the said Phiness Y. Robinson his
462 head-right certificate for a league and labor of land in Texas.

Ans. to 6th Int. I was acquainted with one J. H. Bradshaw; he and myself were second cousins. I cannot state as to his general reputation for truth and veracity in the community in which he lived. He was a rude kind of a boy, but a kind-hearted man.

Ans. to 7th Int. I was acquainted with the handwriting of Phiness Y. Robinson; was not acquainted with the handwriting of Dennis Trammell, David Trammell, and J. H. Bradshaw. I became acquainted with the handwriting of Phineas Y. Robinson by often seeing him write and reading his writing. I have examined the paper purporting to be signed by "Fines Robrtson" as the grantor and by J. H. Bradshaw and David Trammell as subscribing witnesses, transferring to Denniss Trammell the head-right certificate of said "Robrtson" for a league and labor of land granted him by the Republic of Texas, No. 127, now exhibited to me, on which I endorse my name, and do not recognize the handwriting of either the body or signature of either of the parties to said paper. I am satisfied that the signature "Fines Robrtson" is not the genuine signature of Phiness Y. Robinson referred to in the preceding

interrogatories. I formed this opinion from having often seen him sign his name, and examined his signature. I do not know in whose handwriting said signature is in; I never saw said paper before.

Ans. to 8th Int. To the best of my recollection it was in the year 1867 one Alex. Salser came to my house and proposed to purchase and buy my interest in certain lands in the State of Texas which he said belonged to my father. He proposed to purchase said lands for one Dennis Trammell. He offered me a horse that be-
463 longed to Dennis Trammell for my entire interest in said lands.

Cross-Interrogatories.

Ans to 1st cross-int. I met one W. H. Cundiff, of Texas, at this place this morning—the only time I ever saw him. I suppose he is here looking up evidence to be used in this suit.

Ans to 2nd cross-int. I know nothing of the reputation of said Cundiff in Houston county, Texas, or any other place.

Ans. to 3rd cross-int. Said Cundiff has never asked me or talked to me in reference to what my testimony would be in this case.

Ans. to 4th cross-int. The parties present while my answers are being taken are J. S. Dollarhide, Alex. Robinson, Matilda Gartney, W. H. Cundiff, the notary public, and myself. The said W. H. Cundiff has asked no questions while my answers are being taken. He is sitting in the gallery, reading a newspaper.

Ans. to 5th cross-int. I first knew J. H. Bradshaw in Sevier county, Arkansas, when we were both children. I was acquainted with him all the time, except while my father was living in Texas and Louisiana, until about the year 1867, and I have seen or heard very little of him since. He lived northwest of Paraclifta, in Sevier county, Arkansas, 8 or 10 miles, part of the time, and part of the time about 20 miles in the same direction from Paraclifta, the then county-seat. I suppose he lived 6 or 7 miles from Phiness Y. Robinson when living at either place.

464 Ans. to 6th cross-int. J. H. Bradshaw is my second cousin.

Ans. to 7th cross-int. Several years ago myself and others of the Robinson heirs employed one Charles L. Dellahunty, of Mt. Pleasant, Texas, to recover certain lands that he informed us belonged to our father, situated in the State of Texas. The said Dillahunty was to pay all the expenses and we were to give him ½, half, of the land he recovered. I have never seen or heard from said Dillahunty since.

Ans. to 8th cross-int. I, as one of the heirs of Phiness Y. Robinson, never consulted James S. Dollarhide or any other person in regard to employing the lawyer to recover our father's head-right to land in Texas.

Ans. to 9th cross-int. As well as I can recollect, the names and ages of Phiness Y. Robinson's children were as follows: William C. Robinson, age fifty-five years; Matilda J. Gartney, aged fifty-three years; Francis M. Houston, aged 51 years; Edith S. Brown, aged

forty-nine years; Nancy W. Stout, forty-seven years of age; James Y. Robinson, forty-four years of age; John S. Robinson, forty-two years of age; George R. Robinson, forty years of age; Phiness M. Robinson, thirty-eight years of age; Allen S. Robinson, thirty-five years of age; Boon E. Robinson, about thirty-six years of age, and Mary C. Maddox, 29 years of age on the 22nd day of June, 1883. Matilda J. Gartney was first married on the 6th day of July, A. D. 1843, to Joseph Greenwood; second, to Charles S. Dicks; third, to William G. Gartney, the dates of her several marriages not recollected except first. Francis M. was married to Peter E. Houston; date of marriage not recollected. Edith S. was married to James R. Brown. They were married in 1852. Nancy W. was mar-
465 ried, in 1856, to William Morris; in 1858, to Herman Franklin; in 1863, to John Stout. Mary C. was first married to James S. Grace, in 1878, and in 1880 to John N. Maddox. Phiness Y. Robinson once acted as constable in Sevier county, Arkansas. I do not remember when or how long he acted as such.

Ans. to 10th Int., cross. I have no letters or documents in my possession that I know to be the genuine signatures of Phiness Y. Robinson except a certain bond, which I hereto attach and make part of my answer, and upon which I endorse my name. I know this signature to be genuine from having seen him sign said bond. Said bond is also marked Exhibit "A" and attached hereto.

Ans. to 15th cross-int. H. G. Rind — David Foran held the offices of circuit clerk & Co. & probate judge for many years in Sevier county, Arkansas, including the year 1855. I do not recollect where they first held office or when they went out of office.

Ans. to 16th cross-int. During the year 1855 H. G. Rind held the office of circuit clerk and David Foran held the office of county and probate judge in Sevier county. The county-*cite* of said county was Paraclifta at that time.

Ans. to 17th cross-int. I was acquainted with the reputation of H. G. Rind and David Foran in Sevier county for honesty and fidelity in office, which was good.

Ans. to 18th cross-int. I know that H. G. Rind and David Foran were acquainted with my father, Phiness Y. Robinson, and J. H. Bradshaw from having often seen them together. I do not
466 know whether they were acquainted with Dennis and David Trammell or not.

Ans. to 19th cross-int. I do not remember whether Phiness Y. Robinson acted as constable in Sevier county while H. G. Rind and David Foran were holding office in same county or not.

Ans. to 20th cross-int. I am not acquainted with the handwriting of H. G. Rind sufficient to testify in regard to it.

Ans. to cross-int. 21st. I have examined the two certificates signed by H. G. Rind on the deed from "Fines Robertson" to Dennis Trammell and the two seals thereto attached, and do not know whether they are genuine or not.

WILLIAM C. ROBINSON.

Sworn and subscribed to before me this 15th day of May, 1883.

[SEAL.] JAMES S. STEEL,
Notary Public.

STATE OF ARKANSAS, }
County of Sevier. }

Be it remembered that I, James S. Steel, a notary public within and for the county — Sevier, State of Arkansas, duly commissioned and acting as such, do hereby certify that by virtue of a commission to me directed from the circuit court of the United States for the 5th circuit and northern district of Texas, in the 5th circuit, and the interrogatories propounded to William Robinson *et al.* in a cause pending in said court, wherein Ida Underwood *et al.* are plaintiffs and H. J. Dugan *et al.* are defendants, I caused William C. Robinson to appear before me, at the residence of William G. Gartney, in Sevier county, Arkansas, on the 15th day of May, 1883, and then and there examined them upon the said interrogatories and cross-interrogatories,
467 copies whereof are hereunto annexed, on their corporal oaths first taken before me, and the answers of said witness to such interrogatories and cross-interrogatories were reduced to writing by me in the presence of said witness and by him signed and sworn to in my presence.

In witness whereof I have hereunto set my hand and affix- the seal of my office, as such notary public, the day and date mentioned in the caption hereof.

JAMES S. STEEL,

[SEAL.] *Notary Public, Sevier County, Arkansas.*

468 Interrogatories propounded to James H. Starr, who resides in Harrison county, Texas; James R. Arnold, who resides in Caddo parish, State of Louisiana; James Morris and James A. Dallerhide, who reside in Little River county, Arkansas; George F. Moore and R. S. Walker, who reside in Travis county, Texas; Sam. Allen and W. R. Baker, who reside in Harris county, Texas; J. P. Smith, who resides in Tarrant county, Texas; Robert Elgin, who resides in Harris county, Texas, and Alfred Grooms, who resides in Travis county, Texas.

Int. 1st. What is your name, age, residence, and occupation?

Int. 2nd. To Morris, Dallerhide, Starr, Arnold, Moore, Walker, Baker, and Allen: Are you acquainted with or were you ever acquainted with one Finess Y. Roberson, *alias* Finess Y. Robertson, Oscar Engeldow, George Allen, and H. B. Dance or either of them and which of them; when, where, and how long; are they or such of them as you knew living or dead; when and where did they or such as you know die, if dead?

Int. 3rd. Were you in any manner and in what way acquainted with the signature or handwriting of all or any of said parties? If so, of which, and how were you so acquainted and for how long a time?

Int. 4th. Please examine a certain transfer which will be shown to

you by the officer taking your deposition, purporting to be a transfer of said Roberson's head-right certificate, and state whether or not, in your opinion, you know any of the signatures to such transfer, either of the grantor or maker or that of any of the witnesses thereto, and which of them you do know, and whether they are or not, in your opinion, the genuine signatures of such of the parties as you may have known.

469 Int. 5th. In your opinion whose signatures do you know to said transfer?

Int. 6th. Please identify said transfer about which you may have testified by placing thereon some mark or in some other way referring to it that a court may know what transfer you are deposing about.

Int. 7th. What was the character of the said witnesses to the aforesaid transfer, if you know it, for honesty, intelligence, and fair dealing?

Int. 8th. When, if ever, did Finess Y. Robertson leave or move from Texas, and where did he move to—into what State, county, or country—and how long did he live there?

Int. 2nd. To Robert Elgin and Alfred Grooms: What official or other position did you hold during the year A. D. 1855, and especially during June, July, and August, A. D. 1855?

Int. 3rd. — Robert M. Elgin and Alfred Groom: While you may have been connected with the general land office of Texas during A. D. 1855, and especially during June, July, and August of said year, did you ever see or in any manner handle—or, if so, in what way—the Finesse Robertson league and labor land certificate No. 127, issued in Houston county, Texas, in 1838?

Int. 4th. State whether or not you saw then during the year A. D. 1855 any transfer endorsed on the back of said certificate. If not, was there anything to prevent or make difficult you seeing

470 such transfer? If so, describe particularly what it was prevented you from seeing such transfer, if anything did prevent your seeing same.

Int. 5th. Was there any fastened on or to said certificate when it came into the general land office in A. D. 1855? If yea, what was it, and how do you know? State fully all matters connected with any paper which may have been on said certificate and what it, the paper, hid or covered, if anything, and how and why you know.

Int. 6th. Was the said certificate marked filed? If so, where and by whom? Where was the file-mark placed? If not on the certificate itself, why was it placed on something else?

Int. 7th. If in your answer either of you have stated in substance that when the said certificate came into the general land office in A. D. 1855 the same was covered on the back thereof by and with a piece of brown or other paper, then state whether or not the said brown paper was ever removed or taken from the back or off of said certificate. If yea, when, where, how, and by whom? State, then, after this was done what was discovered under said brown or other paper, and, if a transfer, from whom and to whom. What was the appearance of said certificate when you first saw same—worn or

mutilated? If yea, much or little, and such as to show or not any cause for covering the same with any paper to preserve the pieces; and state whether transfer inquired about could or not be seen before taking said brown or other paper off of said certificate, and when the same was first discovered, and how it was it was discovered.

Int. 8th. Did you know or does the records of general land
471 office show that one W. C. Caruthers acted in 1842 as deputy surveyor? If yea, of what county or district was he a surveyor of?

Int. 2nd. To J. P. Smith: Do you know anything about the Finesse Robertson league and labor of land in Montague county, Texas? If yea, state its value and all you may know about the location thereof.

Int. 3rd. Have you any interest in this suit or are you in any way related to any of the parties to this action? If so, in what way and to whom?

Int. 4th. State whether or not any one—and, if so, who and when—told you about the placing or pasting of a certain paper on the back of the Finesse Roberson league and labor land certificate, and state fully all that was said to you on the subject.

Int. 5th. State whether or not you know James P. Dumas. If yea, when did you first get acquainted with him? What office, if any, did he hold in 1854 or 1855 and prior thereto, and how long did he hold said office, and in what county or district?

Int. 6th. Did you ever know one W. C. Caruthers, a deputy surveyor? If so, when or where did he live and hold office as such deputy surveyor?

(Signed) A. M. CARTER AND
WELLBORNE, LEAKE & HENRY,
Solicitors for Plaintiffs.

Service of within accepted, and we consent that the depositions of any of the witnesses named in the notice may be taken in Travis county, Texas, by any officer of said county authorized by the laws of the State of Texas to take and return depositions. Time waived.

SAWNIE ROBERTSON,
Solicitor for Def'd'ts.

472 *Cross-Interrogatories to Morris, Dallerhide, Arnold, Moore, Walker, Baker, — Allen, Witnesses for Plaintiffs.*

Cross-int. 1st. If you have stated that you are acquainted with the handwriting or signature of Finess T. Roberson or Robertson, Oscar Engeldow, George Allen, and H. B. Dance, or either of them, please state the last time you saw either of them write anything or saw anything that you knew was written by either of them. Where are each of said parties now?

SAWNIE ROBERTSON,
Def'd'ts' Solicitor.

Cross-Interrogatories to Robert Elgin and Alfred Groom.

Cross-int. 1st. How do you know that there was any thing or paper attached or fastened to the Finess Roberson certificate when it came into the land office in 1855 or about that time? How do you know but that the paper referred to has not been attached to said certificate since that time? When was your attention first called to the paper on said certificate, and who by? When were you last employed in the land office?

Cross-int. 2nd. What was the custom in the land office in Texas in 1855 and for a few years previous to and after said year as to where file-marks on certificates were placed on the envelope containing the certificate or on a piece of paper filed with, attached to, or accompanying it? If yea, please state about the proportion of times the file-marks were placed on the certificate itself and on the envelope or piece of paper attached to or accompanying it.

473 Cross-int. 3rd. When was the pretended transfer on the back of the Fines Roberson certificate first discovered, and who by? Who was said transfer to, and why was it not sooner discovered by such person?

SAWNIE ROBERTSON,
Defendants' Solicitor.

Cross-Interrogatories to J. P. Smith.

Cross-int. 1st. Where do you live now, and how long have you lived at such a place? What is your occupation? Did you ever engage in any way in the land business; if yea, where at and who with? Were you ever engaged or interested in any land transaction with any person by the name of Cundiff; if yea, which one of the Cundiffs, and what was the nature of the transaction?

Cross-int. 2nd. Where is the person who you say told you about the pasting or placing of a piece of paper on the Finesse Roberson certificate now? Who was present when he told you what you have testified about in answer to Int. 4th? Where did he tell you this, and when? How long had you known him at that time? Where did he live at that time, and where did you live? How did plaintiffs find out that he told you this, and when did they find it out? Did said person tell you this as a secret or publicly? If as a secret, how did you come to tell it? If publicly, give the name and residence of some one besides yourself who heard it.

Cross-int. 3rd. How long have you known the Cundiffs,
474 and what interest has each of them in this suit? Do you not know that the deed to James J. R. Cundiff was only made to give the Federal court jurisdiction of this case, and thereby avoid a trial where they are known?

SAWNIE ROBERTSON,
Solicitor for Def'd'ts.

475 J. P. SMITH answers as follows:

Int. 1st. My name is J. P. Smith; age, 52 years. I reside at Fort Worth, Texas; am a lawyer by profession.

Int. 2nd. I do. It is located on Red River, in Montague county, Texas. I do not know its present value. I know nothing of my own knowledge about its location.

Int. 3rd. I have no interest in this suit; am not in any way related to any of the parties.

Int. 4th. J. P. Dumas told me in the office of Hendricks & Smith, in the year 1868, in Fort Worth, Texas, that he, the said Dumas, did paste a piece of brown paper on the back of the Finesse Robertson league and labor land certificate in August, 1853. H. G. Hendricks and myself were then law partners and had some correspondence with Mr. Underwood, of Kentucky, about the Finesse Robertson certificate. We had a transcript from the general land office of the Finesse Robertson certificate and transfers and field-notes of the survey in Montague county. Mr. Hendricks and myself and Mr. Dumas was in our office, and — stated to us that in August, in 1853, he was surveyor in Grayson county Texas; that the Finesse Robertson league and labor land certificate, with the field-notes, were on file in the surveyor's office and became forfeited for non-return of the field-notes to the general land office on the 31st day of August, 1853; that A. M. Alexander, a friend of his, located the Elizabeth Smith cert. over the Robertson survey; he further stated that there was a written transfer on the back of the Robertson certificate to ——
Underwood, and that he, the said Dumas, just before the
476 forfeiture, in August, 1853, did paste a piece of brown paper on the back of said Robertson certificate, covering up the transfer.

Int. 5th. I did know James P. Dumas, of Grayson county, Texas, who is now dead. I became acquainted with him in the year 1854. He had been surveyor of Grayson county, but I am not sure whether he was then surveyor or not. He was surveyor in 1853, but do not know how long he held the office.

Int. 6th. I do not remember of ever knowing W. C. Caruthers.

J. P. SMITH.

477 *Cross-Interrogatories (J. P. Smith).*

X Int. 1. I live in Ft. Worth, Texas; have lived here 29 years; lawyer. I have been engaged extensively in the land business. I have been engaged in the land business at Ft. Worth with different persons. I bought some lands in Wise county, Texas, from W. H. Cundiff, of Wise county, Texas, in the year 1882. In 1871 or '2 myself and H. G. Hendricks, my law partner, were employed by Cundiff to bring suit for the J. A. Creary $\frac{1}{3}$ league survey of land in Tarrant county, Texas, and have never had any other land transactions with any man by the name of Cundiff.

X Int. 2. He is dead. H. G. Hendricks, J. P. Dumas, and myself, in the law office of Hendricks and Smith, in Ft. Worth, Texas, in the

year 1868. I have known him about 14 years. He lived at or near Pilot Grove, in Grayson county, Texas, and I lived at Ft. Worth, Texas. H. G. Hendricks had been a member of the law firm of Hendricks and Marshall, who had corresponded with Mr. Underwood prior to the late war. Mr. Hendricks became my law partner in 1866. We were corresponding with Mr. Underwood at the time of his death, some time prior to 1873, and had some correspondence with his son after his death. Mr. Hendricks died in 1873. Some time after Mr. Hendricks' death W. H. Cundiff came to see me in Forth Worth about the Underwood claim to the Finesse Roberson survey. I then told him what Mr. Dumas had stated to Mr. Hendricks and myself. There was no secrecy enjoined in the matter. He told us publicly. There was no one present but Mr. Dumas, Mr. Hendricks, and myself.

Cross-int. 3. I only know W. H. Cundiff, and I know nothing of an interest that any Cundiff has in this suit. I know noth-
478 ing of any deed to James J. R. Cundiff—I never heard his name before—and know nothing of any connection he has with this suit, if he has any, or with the land in controversy, and if he has any interest in the land in controversy I do not know it.

(Signed) J. P. SMITH.

STATE OF TEXAS, }
County of Tarrant. }

I, Zane Cetti, notary public in and for said county and State, do hereby certify that the foregoing answers were sworn to and subscribed by the witness, J. P. Smith, before me.

Given under my hand and seal this 31st day of May, 1883.

ZANE CETTI,

[SEAL.] *Notary Public, Tarrant County, Texas.*

479 *Interrogatories Propounded to James H. Starr, a Resident of Harrison Co., Texas, Witness for Plaintiffs.*

Int. 1st. What is your name, age, residence, and occupation?

Int. 2nd. To Morris, Dallerhide, Starr, Arnold, Morre, Walker, Baker, & Allen: Are you acquainted with or were you ever acquainted with one Finess Y. Robertson, *alias* Finess Y. Robertson, Oscar Engledow, George Allen, and H. B. Dance or either of them, and which of them? When, where, and how long? Are they or such of them as you knew living or dead? When and where did they or such as you knew die, if dead?

Int. 3rd. Were you in any manner, and in what way, acquainted with the signatures or handwriting of all or any of said parties; if so, of which, and how were you so acquainted, and for how long a time?

Int. 4th. Please examine a certain transfer which will be shown to you by the officer taking your deposition, purporting to be a transfer of said Robertson's head-right certificate, and state whether or not, in your opinion, you knew any of the signatures to such

transfer, either of the grantor or maker or that of any of the witnesses thereto, and which of them you do know, and whether they are or not, in your opinion, the genuine signatures of such of the parties as you may have known.

Int. 5th. In your opinion whose signatures do you know to said transfer?

Int. 6th. Please identify said transfer about which you may
480 have testified by placing thereon some mark or in some other way referring to it that a court may know what transfer you are deposing about.

Int. 7th. What was the character of the said witnesses to the aforesaid transfer, if you know it, for honesty, intelligence, and fair dealing?

Int. 8th. When, if ever, did Feniss Y. Roberson leave or move from Texas, and where did he move to—into what State, county, or country—and how long did he live there?

Int. 2nd. To Robert Elgin and Alfred Groom: What official or other position did you hold during the year of A. D. 1855, and especially during June, July, and August, A. D. 1855?

Int. 3rd. To Robert M. Elgin and Alfred Groom: While you may have been connected with the general land office of Texas during A. D. 1855, and especially during June, July, and August of said year, did you see or in any manner handle—and, if so, in what way—the Finesse Robertson league and labor land certificate No. 127, issued in Houston county, Texas, in 1838?

Int. 4th. State whether or not you saw then, during the year A. D. 1855, any transfer indorsed on the back of said certificate. If not, was there anything to prevent or make difficult your seeing such transfer? If so, describe particularly what it was prevented you from seeing such transfer, if anything did prevent your seeing same.

Int. 5th. Was there any — fastened on or to said transfer
481 when it came into the general land office, in A. D. 1855; if yea, what was it and how do you know? State fully all matters connected with any paper which may have been on said certificate, and what it, the paper, hid or covered, if anything, and how and why you know.

Int. 6th. Was the said certificate marked "file?" If so, when and by whom? Where was the file-mark placed? If not on the certificate itself, why was it placed on something else?

Int. 7th. If in your answer either of you have state- in substance that when the said certificate came into the general land office, in A. D. 1855, the same was covered on the back thereof by and with a piece of brown or other paper, then state whether or not the said brown paper was ever removed or taken from the back or off of said certificate. If yea, when, where, how, and by whom? State then after this was done what was discovered under said brown or other paper, and, if a transfer, from whom and to whom. What was the appearance of said certificate when you first saw same—worn or mutilated? If yea, much or little and such as to show or not any cause for covering the same with any paper to preserve the pieces? And state whether the transfer enquired — could or not be seen

before taking said brown or other paper off of said certificate and when the same was first discovered and how it was it was discovered.

Int. 8th. Did you know or does the records of general land office show that one W. C. Caruthers acted in 1842 as deputy surveyor? If yea, of what county or district was he a deputy surveyor of?

482 Int. 2nd. To J. P. Smith: Do you know anything about the Finesse Robertson league and labor of land in Montague county, Texas? If yea, state its value and all you may know about the location thereof.

Int. 3rd. Have you any interest in this suit or are you in any way related to any of the parties to this action; if so, in what way and to whom?

Int. 4th. State whether or not any one, and, if so, who and when, told you about the placing or pasting of a certain paper on the back of the Finesse Roberson league and labor land certificate, and state fully all that was said to you on the subject.

Int. 5th. State whether or not you knew one James P. Dumas. If yea, when did you first get acquainted with him? What office, if any, did he hold in 1854 or 1855 and prior thereto, and how long did he hold such office and in what county or district?

Int. 6th. Did you ever know one W. C. Caruthers, a deputy surveyor? If so, when and where did he live and hold office as such deputy surveyor?

A. M. CARTER AND
WELLBORN, LEAKE & HENRY,
Solicitors for Plaintiffs.

Service of within accepted, and we consent that the depositions of any of the witnesses named in the notice may be taken in Travis county, Texas, by any officer of said county authorized by the laws of the State of Texas to take and return depositions. Time waived.

SAWNIE ROBERTSON,
Solicitor for Def'nd'ts.

483 *Cross-Interrogatories to Morris, Dallerhide, Starr, Arnold, Moore, Walker, Baker, & Allen, Witnesses for Plaintiffs.*

Cross-int. 1st. If you have stated that you are acquainted with the handwriting or signature of Finess T. Roberson or Robertson, Oscar Engledow, George Allen, or H. B. Dance or either of them, please state the last time you saw either of them write anything or saw anything that you know was written by either of them. Where are each of said parties now?

(Signed) SAWNIE ROBERTSON,
Defendants' Solicitor.

Cross-Interrogatories to Robert Elgin and Alfred Groom.

Cross-int. 1st. How do you know that there was any thing or paper attached or fastened to the Finesse Rcberson certificate when it came into the land office, in 1855 or about that time? How do you know

but that the paper referred to has not been attached to said certificate since that time? When was your attention first called to the paper on said certificate and who by? When were you last employed in the land office?

Cross-int. 2nd. What was the custom in the land office in Texas in 1855 and for a few years previous to and after said year as to where file-marks on certificates were placed? Were the file-marks ever placed on the envelope containing the certificates or on a piece of paper filed with, attached to, or inclosing it? If yea, please state about the proportion of times the file-mark was placed on the certificate itself and on the envelope or piece of paper attached to or accompanying it.

484 Cross-int. 3rd. When was the pretended transfer on the back of the Finess Roberson certificate first discovered and who by? Who was said transfer to, and why was it not sooner discovered by such person?

(Signed) SAWNIE ROBERTSON,
Def'd'ts' Solicitor.

Cross-Interrogatories to J. P. Smith.

Cross-int. 1st. Where do you live now and how long have you lived at such place? What is your occupation? Did you ever engage in any way in the land business? If yea, where at and who with? Were you ever engaged or interested in any land transaction with any person by the name of Cundiff? If yea, which one of the Cundiffs and what was the nature of the transaction?

Cross-int. 2nd. Where is the person who, you say, told you about the pasting or placing of a piece of paper on the Finesse Roberson certificate now? Who was present when he told you what you have testified about in answer to Int. 4th? Where did he tell you this, and when? How long had you known him at that time? Where did he live at that time and where did you live? How did plaintiffs find out that he told you this, and when did they find it out? Did said person tell you this as a secret or publicly? If as a secret, how did you come to tell it? If publicly, give the name and residence of some one besides yourself who heard it.

Cross-int. 3rd. How long have you known the Cundiffs and what interest has each of them in this suit? Do you not know that the deed to James J. R. Cundiff was only made to give the Fed-

485 eral court jurisdiction of this case and thereby avoid a trial where they are known?

(Signed) SAWNIE ROBERTSON,
Defendants' Solicitor.

486 *Answers to Interrogatories Propounded to James H. Starr.*

To interrogatory 1st he answers: My name is James H. Starr; am 72 years old; reside in Harrison county, Texas; have retired from business.

To Int. 2nd he answers: I was not acquainted with Finess Y.

Robertson. I was acquainted with Oscar Engledow, George Allen, and H. B. Dance—with Oscar Engledow from the year 1837 till the year 1865 or 1866, in Nacogdoches county, Texas, and who died in said Nacogdoches county about the year 1865 or 1866; with George Allen in said Nacogdoches county in the years 1837 and 1838; he removed thence to the city of Houston, Texas, where he is reported to have died some years later; with H. B. Dance in said Nacogdoches county from the year 1837 to about the year 1839 or 1840; probably longer; I do not remember in regard to his death.

To Int. 3rd he answers: I was acquainted with the signature and handwriting of Oscar Engledow, having often seen him write during a period of many years. I am quite certain that I knew the signatures of Allen and Dance, but, from lapse of time, I am unable to speak confidently respecting them.

To Int. 4th he answers: I have examined the transfer of Roberson's head-right certificate, and I am confident that the signature of Oscar Engledow appearing as a witness to said transfer is the genuine signature of said Engledow.

To Int. 5th he answers: I only know the signature of the witness Oscar Engledow.

487 To Int. 6th he answers: In order to identify said transfer I have marked it thus, J. H. S.

To Int. 7th he answers: The character of Oscar Engledow was unexceptionally good for honesty, intelligence, and fair dealing; George Allen and H. B. Dance were men of good reputation and standing in the community.

To Int. 8th he answers: I have no recollection of Roberson or Robertson.

J. H. STARR.

To cross-int. 1st he answers: I saw Oscar Engledow write but a short time before his death, which occurred about the year 1865 or 1866; had occasion to see his writing and signature within the last few years; certainly as late as the year 1880. Engledow and Allen are both dead. Of Roberson or Robertson I know nothing. I believe Dance to be dead.

J. H. STARR.

Sworn to and subscribed to before me this 20th day of May, A. D. 1882.

R. P. LITTLEJOHN,
[SEAL.] *Notary Public of Harrison County, Texas.*

STATE OF TEXAS,
County of Harrison.

I, R. P. Littlejohn, notary public in and for said Harrison county, do hereby certify that the foregoing answers and depositions of James H. Starr, the witness named in the foregoing and annexed commission and residing in said Harrison county, were made before me and were sworn to and signed before me by the said witness.

Given under my hand and seal of office this 20th day of May, A. D. 1882.

R. P. LITTLEJOHN,
[SEAL.] *Notary Public of s'd Harrison Co.*

488 *Interrogatories to Wm. Howeth and W. C. Twitly, Residents of Cooke County, Texas.*

1st. State your name, age, and place of residence.

2nd. Did you ever know Squire W. March? If so, state when, where, and how long you knew him.

3rd. Did you ever hold any office in Cooke county or Cooke land district? If so, what office did you hold?

4th. This suit is about a survey of land in Montague county, Texas, containing one league and one labor, patented on the 8th day of August, 1855, to S. W. March, as the assignee of Finess Roberson by virtue of certificate No. 127, issued by the board of land commissioners of Houston county on the 1st day of March, 1838. Did you ever have said certificate No. 127 in your possession? If so, state when, where, how long, and for what purpose.

5th. When did you first learn of the existence of said certificate?

6th. At the time you had said certificate in your possession was there any transfer on the back of the same to Warner L. Underwood or Joshua Robbins or to any other person? If not, state fully how you know that there was no transfer on the back of said certificate?

7th. What was the condition of said certificate at the time you had it in your possession? Was there any brown paper
489 pasted over the back of said certificate? If not, state fully your means of knowing.

8th. Did you ever own any part of the land in dispute? If so, state how much and when and how you acquired it.

9th. What did you do with your part of said land? If you should say that you sold it to George Dugan, state when and where you sold it to said Dugan. State what said Dugan paid for said land, if anything, and when and where he paid it.

10th. At the time you sold said land to said Dugan what sort of title did you think you had thereto? What sort of title did said Dugan think he was acquiring to said land? And state fully your means of knowing.

11th. At the time you sold said land to said Dugan did you know that Warner L. Underwood and Joshua Robbins or either of them either had or claimed to have any title to or interest in said land or certificate? At said time did said Dugan know that said Underwood and Robbins or either of them had or claimed to have any title to or interest in said land or certificate? If not, state fully your means of knowing and upon what you base that opinion or belief.

12th. When did you first hear or learn that Warner L. Underwood and Joshua Robbins or their heirs claimed said land or certificate?

490 *Interrogatories to W. T. Waybore, a Resident of Montague County, Texas.*

1st. State your name, age, and place of residence.

2nd. Did you ever know Squire W. March? If so, state when, where, and how long you knew him.

3rd. This suit is about one league and labor of land in Montague county, Texas, patented on the 8th day of August, 1855, to S. W. March, assignee of Finess Roberson, by virtue of certificate No. 127, issued on the 1st day of March, 1838, by the board of land commissioners of Houston county. Do you know where said land is situated, and have you ever been on the same? If so, how long have you known said land and how often have you been on it?

4th. Did you ever examine the certificate by virtue of which said land was patented and the other papers relating thereto after the same was returned to the general land office and after the same was patented to S. W. March? If so, state when and where and why you examined said certificate. If you should say that you examined it in the general land office at Austin at the request of S. W. March, state how you came to be in Austin and what caused you to examine said certificate.

5th. At the time you examined said certificate was there any transfer on the back of the same to Warner L. Underwood or to any other person? If not, state fully how you know that fact.

491 6th. At said time was there any brown paper pasted over the back of said certificate? If not, state fully your means of knowing. Describe fully the condition of said certificate. If any brown paper was attached to said certificate, describe the same and state how it was fastened to the certificate, if at all, and state if there was any transfer under said brown paper.

7th. State all that you may know in reference to the condition of said certificate that would be of any benefit to the parties at issue as fully as if thereto specially interrogated.

8th. Did said S. W. March ever take possession of said land and make or cause any improvements to be made thereon? If so, state when and state how he took possession, whether in person or by tenant. If by tenant, state who his tenants were and state what improvements were made by such tenants or by S. W. March upon said land and when they were made and your means of knowing.

9th. Did S. W. March ever pay taxes on said land or claim it as his own? If so, state when and how long and your means of knowing.

10th. If in answer to the above interrogatory you should say that S. W. March took possession of said land, state whether or not the same has been occupied ever since said March so entered upon the possession of the same. If so, state who has occupied said land and under whom they claimed. State what improvements are upon said lands and when and by whom they were made, and state if any of said land has been cultivated, and, if so, how much, by whom, and for what years? Are there any houses upon said land? If so, state

how many, who built them, and who has occupied them, if
492 any one, and for what years, and under whom they claim.

493 *Interrogatories to William Howith and W. C. Twitly, Residents of Cooke County, Texas.*

Int. 1st. State your name, age, and place of residence.

Int. 2nd. Did you ever know Squire W. March? If so, state when, where, and how long you knew him.

Int. 3rd. Did you ever hold any office in Cooke county or Cooke land district; if so, what office did you hold?

Int. 4th. This suit is about a survey of land in Montague county, Texas, containing one league and one labor, patented on the 8th day of August, 1855, to S. W. March, as the assignee of Finesse Robinson, by virtue of certificate No. 127, issued by the board of land commissioners of Houston county on the 1st day of March, 1838. Did you ever have said certificate No. 127 in your possession? If so, state when, where, how long, and for what purpose.

Int. 5th. When did you first learn of the existence of said certificate?

Int. 6th. At the time you had said certificate in your possession was there any transfer on the back of the same to Warren L. Underwood or Joshua Robbins or to any other person? If not, state fully how you know that there was no transfer on the back of said certificate.

Int. 7th. What was the condition of said certificate at the
494 time you had it in your possession? Was there any brown paper pasted over the back of said certificate? If not, state fully your means of knowing.

Int. 8th. Did you ever own any part of the land in dispute? If so, state how much and when and how you acquired it.

Int. 9th. What did you do with your part of said land? If you should say that you sold it to George Dugan, state when and where you sold it to said Dugan; state what said Dugan paid you for said land, if anything, and when and where he paid it.

Int. 10th. At the time you sold said land to said Dugan what sort of title did you think you had thereto? What sort of title did said Dugan think he was acquiring to said land? And state fully your means of knowing.

Int. 11th. At the time you sold said land to said Dugan did you know that Warner L. Underwood and Joshua Robbins or either of them either had or claimed to have any title to or interest in said lands or certificate; at said time did said Dugan know that said Underwood and Robbins or either of them had or claimed to have any title to or interest in said land or certificate; at said time did said Dugan know that said Underwood and Robbins or either of them had or claimed to have any title to or interest in said land or certificate? If not, state fully your means of knowing and upon what you base that opinion or belief.

495 Int. 12th. When did you first hear or learn that Warren L. Underwood and Joshua Robbins or their heirs claimed said land or certificate?

DAVIS & GARNET AND
SAWNIE ROBERTSON,
Solicitors for Defendants.

496 *Cross-Interrogatories Propounded by Plaintiffs to William Howith and W. C. Twitly, of Cooke Co., Texas.*

Cross-int. 1st. What is your age, and where do you reside?

X Int. 2nd. If in answer to direct interrogatories you state that you located or were interested in locating the Finesse Robertson certificate, you will state when and where you first saw said certificate, and in whose hands or control it then was, and state who delivered and who caused said certificate to be delivered to you, and for what purpose; and state what use you made of it, how long you kept it, and when and how it went out of your possession; and state whether you have ever seen it since; and, if so, when and where and under what circumstances, and whether and, if any, what change had been made in its appearance or in the indorsements on it.

X Int. 3d. When you first saw said certificate and when you received the same to locate and while you had it in possession for that purpose did it have written on or about any transfer, memorandum, or indorsement? And, if so, describe what it was. Did it have pasted on or to it any paper or covering of any kind? And, if —, describe it fully and state your means of knowing.

X Int. 4th. Had said certificate ever been located or any land prior to the time of your locating? And, if so, where and when?

X Int. 5th. If you have not done so in answering to X interrogatories, you will state all the expenses you were at about locat-
497 ing said certificate, giving the items thereof.

X Int. 6th. Could you not by examination see the indorsement on said certificate?

X Int. 7th. Could you not by examination see there was a piece of colored paper pasted over the back of said certificate before or while it was in your hands?

X Int. 8th. If you say you conveyed said land to Dugan, state whether you made such sale before or after the issuance of a patent for said land. State what consideration he actually paid you for said land and how it was paid. State whether you made to him a warranty or only a quitclaim deed for said land; and if only a quitclaim, then state why you made that character of deed.

X Int. 9th. How are you able to say what Mr. G. C. Dugan believed as to the character of the title he was receiving from you?

X Int. 10th. Do you know anything or have you heard anything, and, if so, who from, as to where said certificate was the whole or at any portion of the time between the dates of issuance and the dates you say you received it for location? And, if so, state it fully in reply to this question, and state all you know about the history and ownership of said land certificate.

X Int. 11th. What is the present fair market value of the land conveyed by March to you and by yourselves to G. C. Dugan,
498 as above? Do you know whether the whole or any portion of it is occupied; and, if so, who by and for how long? Have any improvements been put on it: and, if so, what, and their value, and who by?

(Signed) A. M. CARTER &
WELLBORN, LEAKE & HENRY,
Solicitors for Complainants.

499 Answers and depositions of William Howith, a resident of the city of Gainesville, in Cooke county and State of Texas, to the accompanying interrogatories.

Answers of Witness, William Howith.

To the 1st Int. he answers: My name is William Howith; my ago, 64 years; my place of residence, Gainesville, Cooke county, Texas.

To the 2nd Int. he answers: I knew Squire W. March; he came to Rusk county, Texas, in the year 1845 or 1846, and settled in that county; lived and died there. I knew him from that time until his death, which occurred about two years ago.

To the 3rd Int. he answers: I did. I was a deputy surveyor of Cooke land district.

To the 4th Int. he answers: I had said certificate in my possession. A. M. March, brother to S. W. March, brought said certificate to Cooke county, Texas, I think, in July, 1855, as per substitute contract of date July 28, 1855, between S. W. March, by A. M. March, his brother and agent, and Howith and Twitly to locate same. Said March stopped at the same hotel or boarding-house as myself, and he delivered said certificate to me for the purpose of examination and to be located on the land on which the Joseph S. Cochran certificate was located, the Cochran certificate having proven to be fraudulent.

To the 5th Int. he answers: I first learned of the existence of the Finesse Robertson certificate in April or May, 1852, in the town of Sherman, county of Grayson, State of Texas.

500 To the 6th Int. he answers: At the time said certificate was in my possession there was no transfer on the back of same to Warren L. Underwood or to Joshua Robbins, nor to any other person. I know there was not from careful examination. Had there been any transfer on back of same I would have detected it.

To the 7th interrogatory he answers: The certificate, to the best of my recollection, was in fair, good condition. The names of the board of commissioners who issued it, together with date and number, were all there. There was no brown paper pasted over the back of it. My means of know- was from close examination and observation. Had paper been pasted on the back of that or any other certificate in which I might have had an interest in the land held by virtue of the same it would have raised suspicion in my mind at once of a wrong, and hence the covering would have been removed, if any

was on it, as I had done previously in more instances than one, for in those days I handled many certificates.

To the 8th Int. he answers: I did. 1,343 acres were conveyed to W. C. Twitly and myself on the 17th day of July, 1857. The title was acquired for services rendered and moneys expended in the locating and surveying the Thomas Scott 1,535-acre certificate, Alexander Coates 1,280-acre certificate, Thomas Berryhill 640-acre certificate, and Finesse Robinson's one league and labor certificate.

To the 9th interrogatory he answers: W. C. Twitly and myself sold our parts of said Finesse Robinson land, together with other lands, to G. C. Dugan, in April, 1858, as per bond given for
501 title on said date, and, by deed made to said Dugan on Oct. 5th, 1860, the trade was made in Gainesville, Cooke county, Texas. G. C. Dugan paid us one dollar, in gold coin, per acre for the land. Dugan paid said money to us at the time the trade was made, in Gainesville, Texas.

To the 10th Int. he answers: At the time Twitly and myself sold said land to Dugan I believed that our title was a good and valid one, and Dugan at that time believed that he was acquiring a good title to the land. My means of knowing was, in addition to having examined the certificate, that, having seen that the land had been patented to S. W. March as assignee of Finess Robinson, that had there been any defect or wrong in the title the patent would not have been issued to said March as assignee; hence my explanation of the facts to Dugan satisfied him that he was getting a good title.

To the 11th Int. he answers: I had no knowledge at the time we sold the land to Dugan that Warren L. Underwood or Joshua Robbins or either of them had or claimed to have any title or interest in said land certificate. Said Dugan at said time had no knowledge that said Underwood or Robins or either of them had or claimed to have any title or interest in said land or land certificate. My means of knowing is that said certificate had no transfers on the back of same, and I never heard of any one setting up any claim to said certificate other than S. W. March and those under whom he claimed, and my opinion and belief is that said G. C. Dugan did not know at the time that said Underwood and Robbins or either of them had or claimed to have any title to or interest in said land or land certificate, and I base my opinion and belief upon the facts of my personal knowledge of and acquaintance with G. C. Dugan, knowing
502 that he never paid out any money for anything where there was any doubt as to the validity of the title to the same.

To the 12th Int. he answers: About six or eight years ago, or but a short time before suit was first brought against S. W. March for the Finesse Robinson land, W. H. Cundiff came to my house, in Gainesville, Cooke county, Texas, and there informed me that some party or parties claimed to be the owners of the land in controversy in this suit.

Answers to Cross-Interrogatories.

To cross-interrogatory first he answers: My age is 64 years, and I reside in the city of Gainesville, Cooke county, Texas.

To the 2nd cross-int. he answers: I first saw the Finesse Robinson certificate at the county surveyor's office in Sherman, Grayson county, Texas, in April or May, 1852. I do not know who controlled it. In the latter part of July, 1855, according to record of substitute contract with A. M. March, brother and agent of S. W. March, A. M. March delivered the same to me in Gainesville, Cooke county, Texas, for examination and location, to take the place of the Joseph S. Cochran certificate, which had been delivered to Twitly and myself by A. M. March to be located, but which proved to be fraudulent. The Finesse Robinson certificate was delivered to Twitly and myself and used by us to locate on the lands on which the Cochran certificate was located. The Finesse Robinson certificate was located on said land, and the land was patented by virtue of same. I had the certificate in my possession a night and part of a day and then gave it to W. C. Twitly to apply to and locate on the Cochran land, who applied it to the Cochran field-notes and gave it and the field-notes to A. M. March. I have not seen said
503 certificate since said time until I saw it in the summer of 1878, when I was at district court in Montague county, Texas, at which time W. O. Davis, attorney-at-law, requested W. T. Wayborn, William Hudson, and myself to go to the office of the district clerk in Montague county for the purpose of examining said certificate, said certificate having been sent to the district clerk by order of the district court of Montague county. There and at which time I examined said certificate in the presence of the district clerk, W. O. Davis, Wm. Hudson, and W. T. Waybourn, and at which time I saw indorsements and transfers on the same which were not there when I saw the same at any time previous to that time; there were no indorsements whatever on it when I saw it prior to that time.

To the 3rd cross-int. he answers: At no time when I saw said certificate or had the same in my possession prior to 1878 did it have any written transfer, memorandum, or indorsement upon it; neither did it have on or attached to it any paper or covering of any kind.

To the 4th cross-int. he answers: The said land certificate or a part of it had been located in Grayson county, Texas, as I learned at the surveyor's office in Sherman, in April or May, 1852. I think the survey was made in the year 1851. I was at Sherman several times during the spring and summer of the year 1852 for the purpose of locating lands, at one of which times S. Bostick, who was file-receiver, informed me that J. P. Dumas and the Alexanders were likely to have a lawsuit over the Finesse Robison location in Grayson county, at which time I saw the Robinson certificate and the field-notes. That was the first time I ever saw the Finesse Robinson certificate.

504 To the 5th cross-int. he answers: Howeth and Twitly were at some expense and spent some time in surveying the lands

on which the Finesse Robinson certificate and other certificates hereinafter mentioned were located, which was about as follows: The time spent in locating certificates and making surveys for S. W. March of the Thomas Scott 1,535 acres, Alexander Coates 1,280 acres, Thomas Berryhill 640 acres, and Joseph Cochran league and labor, upon which the Finesse Robinson certificate was afterwards located, was about 7 days, and the services rendered were of the following value, viz: Traversing the Indian frontier 40 or 50 miles from any settlement for the purpose of finding the kind of land upon which to make said location, as per contract, $40.00; by going and sending a team 55 miles to Stinson's mill, near Bonham, to procure breadstuff with which to feed surveyor, two chainmen, and one marker and hand to keep and manage pack and other animals, $30.00; 3rd, to pay four hands at $1.00 each per day from the time of leaving home to do said surveying and returning, 7 days, $28.00; 4th, board of four hands, 7 days, at 50 cts. each day, $14.00; 5th, legal surveying fees for one league and labor, $30.00; for 1,535 acres, $19.00; for 1,280 acres, $16.00; for 640 acres, $12.00; total, $170.00. We, Howeth and Twitly, were not to obtain the patent on these lands. The contract was to select, locate, and survey the land by virtue of said certificate, for which — were to receive one-sixth of the land.

To the 6th cross-int. he answers: I could if there had been any indorsements on it, but there were no indorsements on it when I saw it prior to the summer of 1878, when I saw it in the possession of the clerk of the district court of Montague county, Texas.

To the 7th cross-int. he Ans.: I would and could have seen
505 a piece of colored paper pasted over the back of said certificate if there had been any there to see, but there was no colored paper pasted on it, nor was there any indorsements on it when I saw it prior to the summer of 1878. Had there been any colored paper pasted on the certificate when I saw it in 1855 it would have raised a suspicion in my mind that there was something wrong about it, which would certainly have caused me to examine and enquire about it before I would have had anything to do with it.

To the 8th cross-int. he Ans.: Twitly and myself made G. C. Dugan a warranty deed to our interest in said land on the 5th of October, 1860, and after the patent for the same was issued, believing we had a good title, for which G. C. Dugan paid us one dollar in gold per acre. To the best of my recollection the deed was a warranty deed.

To the 9th cross-int. he Ans.: I am able to say, from the fact that Dugan expressed himself satisfied, that the title to the land was good from the fact that the patent had issued to the land in 1855 and the deed to him was made 1858, and that the deed from Twitly and myself as locators made a full and complete chain of title to him.

To the 10th cross-int. he Ans.: I know nothing about it other than what I have already stated.

To the 11th cross-int. he answers: From three to five dollars per acre. Of my own knowledge I know nothing of the improvements on said lands or their value.

WILLIAM HOWETH.

Sworn to and subscribed to before me on this 11th day of May, A. D. 1882.

[SEAL.] H. E. ELDRIDGE,
Notary Public in and for Cooke County, Texas.

506 STATE OF TEXAS, }
County of Cooke. }

I, H. E. Eldridge, a notary public in and for Cooke county and State of Texas, do hereby certify that the foregoing answers of William Howeth, the witness before named, were made before me and were sworn to and subscribed before me by said witness.

Given under my hand and seal of office on this 11th day of May, A. D. 1882.

[SEAL.] H. E. ELDRIDGE,
Notary Public in and for Cooke County, Texas.

507 UNITED STATES OF AMERICA, }
Northern District of Texas. }

I, A. J. Houston, clerk of the United States circuit court for the northern district of Texas, at Dallas, do hereby certify the foregoing to be a true transcript of the proceedings in said court in the case styled Ida Underwood *et al. vs.* H. J. Dugan *et al.* as the same appears from the files and records of said court now remaining in my custody, and also of the opinion of the court on file in said cause.

The Seal of the U. S. Circuit Court, Northern Dist. Texas, Dallas.

In testimony whereof I have hereunto affixed the seal of said court, at Dallas, and the name of the clerk thereof this 6th day of October, A. D. 1887.

A. J. HOUSTON, *Clerk*,
By JAS. D. ADAMS, *Deputy*.

Endorsed on cover: N. Texas, C. C. U. S. No. 223. Josey Underwood and Warner Underwood, by their next friend, Fanny U. Grider, and W. H. Cundiff, administrator of James H. R. Cundiff, deceased, appellants, *vs.* Harriett J. Dugan, W. P. Dugan, Daniel D. Dugan, Georgie Shannon, William M. Shannon, *et al.* Filed October 13, 1887.